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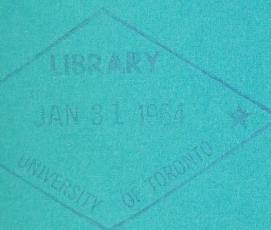
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MONTHLY REPORT



OCTOBER 1963 - MAR. 1964

ONTARIO, IN LABOUR RELATIONS BOARD



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1963/64



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CASE LISTINGS OCTOBER 1963

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Bargaining Agents Certified during October - No Vote Conducted

5657-62-R: International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers Local 419, Warehousemen and Miscellaneous Drivers (Applicant) v. Federal Farms Limited (Respondent).

Unit: "all employees of the respondent at its plant in the Township of East Gwillimbury, save and except foremen and supervisors, persons above the rank of foreman and supervisor, shippers, receivers, dispatchers, office and sales staff, persons regularly employed for not more than 24 hours per week, students employed during the school vacation period and persons employed on a temporary or casual basis." (142 employees in the unit).

The respondent objected to the Board entertaining this application on the ground that the respondent's operation fell outside the jurisdiction of the Legislature of the Province of Ontario. On August 1, 1953 the Board dealt with this objection in the following endorsement:

"The respondent objects to the Board dealing with this application on the ground that the respondent's works and undertakings extend beyond the limits of the Province of Ontario.

The parties agree on the following facts with respect to the respondent's operations. The respondent owns some 440 acres of land upon which it raises vegetable produce. The respondent has a plant close by where the produce is trimmed, washed, graded and packed. In addition to the produce from its own property, the respondent buys some produce from neighbouring farms and at certain seasons from the United States. The respondent has a fleet of some twenty vehicles with which it distributes its produce to market. The respondent sells approximately 10 per cent of its produce in the Province of Quebec. Drivers in the employ of the respondent deliver produce to customers in Quebec on an average of two or three times per week. The respondent has no terminal in Quebec, but rather delivers the produce directly to the customers. In addition, when there is an unexpected heavy demand for produce the respondent will hire outside trucking firms or railroads to make delivery.

The respondent made the following argument to the Board: The respondent's operations are local works or undertakings extending beyond the limits of the province within the meaning of section 92(10)(a) of The British North America Act, which reads:

92. In each Province the Legislature may exclusively make Laws in relation to matters coming within the classes of subjects next hereinafter enumerated; that is to say -

10. Local Works and Undertakings other than such as are of the following classes:-
(a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:

The test to be applied in determining whether local works and undertakings fall within section 92(10)(a) is not the percentage volume of business which is interprovincial, but rather whether there is a continuous and regular pattern of business carried on in another province. (See Regina v. Toronto Magistrates Ex Parte Tank Truck Transportation Limited [1960] O.R. 497, and Desrosier Cartage Inc. Case, Canada Labour Relations Board [1949] C.C.H. C.L.L.R. ¶16,008.) Although the respondent is not primarily engaged in transportation, its trucking operations are an integral and indivisible part of the respondent's business. Since the respondent carries on a regular pattern of business in the Province of Quebec, its operations fall within the exceptions of section 92(10)(a) and, accordingly, within the jurisdiction of The Canada Labour Relations Board. The respondent also places some reliance on a submission that section 91(2) of The British North America Act - "The Regulation of Trade and Commerce" encompasses its operations.

The applicant made the following argument to the Board: Labour relations *prima facie* fall within the provincial jurisdiction. (See Toronto Electric Commissioners v. Snider 1925 A.C. 396.) Moreover, the scope of section 92(10)(a) of The British North America Act is restricted to interprovincial communications. (See Canadian Pacific Railway Company v. Attorney-General for British Columbia, [1950] A.C. 122.) The operations to determine whether it is engaged in works and undertakings extending beyond the limits

UNIT NO.1.

"all employees of the respondent in its editorial, advertising, circulation, administration and maintenance departments, save and except the publisher and general manager, assistant general manager, accountant, assistant accountant, advertising manager, circulation manager, classified department supervisor, maintenance department supervisor, editor, news editor, city editor, secretary to the publisher and general manager, secretary to the assistant general manager, secretary to the advertising manager, proof readers, mail room employees, students hired for the school vacation period, and persons regularly employed for not more than twenty-four hours per week."

(51 employees in the unit) (decision by Board on July 30, 1963)

(Agreement of the Parties)

UNIT NO.2.

"all employees of the respondent at Oshawa, save and except persons regularly employed for not more than 24 hours per week, employees in the bargaining unit defined in the Board's Certificate of July 30th, 1963 in this matter and employees presently bound by a subsisting collective Agreement between the intervener and the respondent"

(Intervener Certified)

The Board endorsed the Record as follows:

"In its application for certification the applicant sought a bargaining unit of employees in the editorial, advertising, circulation, business office and maintenance departments of the respondent. In its reply to the application the respondent proposed the exclusion of proof readers and mail room employees from this unit. The intervener filed two "applications for certification by intervener", for a unit of proof readers and a unit of mail room employees respectively. The respondent filed a reply to each intervention in which it agreed to the description of each of the two units sought by the intervener with certain exceptions not here material. At the hearing in the matter, the applicant agreed to the exclusion of the proof readers and the mail room employees from its unit, and the Board accordingly excluded them from the unit for which a certificate was issued to the applicant on July 30th, 1963. The intervener has a collective agreement with the respondent covering the employees of the respondent engaged in composing room work and the Board was informed that, apart from the employees affected by the various applications herein, there are no other employees who would be eligible for inclusion in any appropriate bargaining unit. At the hearing the intervener requested one bargaining unit of proof readers and mail room employees rather than the separate units for which it had applied. The respondent opposes

a single unit and argues that the proof readers and the mail room employees each constitute a unit appropriate for collective bargaining.

In this case there are 3 mail room employees and 4 proof readers. Having in mind that they are the only employees of the respondent who are not now represented by a bargaining agent, we are of opinion that the appropriate unit for these employees is a "tag end" unit. Accordingly the Board further finds that all employees of the respondent at Oshawa, save and except persons regularly employed for not more than 24 hours per week, employees in the bargaining unit defined in the Board's Certificate of July 30th, 1963, in this matter and employees presently bound by a subsisting collective agreement between the intervener and the respondent, constitute a unit of employees of the respondent appropriate for collective bargaining."

"In support of its applications for certification, the intervener filed documentary evidence of membership on behalf of 5 persons who were employees of the respondent in the bargaining unit at the time the applications were made. In each case this evidence consisted of an "authorization card" signed by the employee and accompanied by a receipt which indicated the payment of \$4.00 for "registration fee", and \$1.16 for "local dues" and which was signed on behalf of the intervener and countersigned by the employee. While the Board is accepting these authorization cards as evidence of membership, it again points out to the intervener, as it has done in several recent cases, that it may have to reconsider the acceptability of such authorization cards as evidence of membership on a future occasion."

6668-63-R: National Union of Public Employees (Applicant)
v. The Corporation of the County of Peel (Respondent).

Unit: "all employees of the respondent at its jail in Peel County, save and except the chief turnkey, persons above the rank of chief turnkey, office staff and persons regularly employed for not more than 24 hours per week." (11 employees in the unit).

6752-63-R: Canadian Union of Operating Engineers (Applicant) v. Northwestern General Hospital (Respondent).

Unit: "all stationary engineers, maintenance men and helpers employed by the respondent at its hospital in Metropolitan Toronto, save and except the chief engineer." (10 employees in the unit).

6759-63-R: Typographical Union No. 837 (Applicant) v. The Sarnia Observer (Respondent).

Unit: "all employees of the respondent at Sarnia engaged in proofreading work." (3 employees in the unit).

(HAVING REGARD TO ALL THE CIRCUMSTANCES)

6767-63-R: Fur Workers' Union, Local 82, affiliated with the Amalgamated Meat Cutters & Butcher Workmen of North America (Applicant) v. Kent Fur Co. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except managers, persons above the rank of manager and office staff." (2 employees in the unit).

On October 2, 1963 the Board endorsed the Record in part as follows:

"This is an application for certification. At the hearing in this matter on September 9th, 1963, Mr. Fisher, counsel for the respondent, raised a "preliminary objection" concerning the documentary evidence of membership filed by the applicant on behalf of an employee in the bargaining unit. The substance of his objection was that the respondent had reason to believe that this employee did not understand that she was signing an application for membership in the applicant union. Mr. Fisher stated that this employee was present in the Board Room and he requested that the Board make inquiries of her at the hearing as to whether she understood what she had signed. The Board pointed out to Mr. Fisher that it was not the practice of the Board to make inquiries itself into a matter of the nature raised by him and that the respondent, if it intended to make an allegation of improper conduct against the applicant in respect to this matter, should have proceeded in accordance with section 48 of the Board's Rules of Procedure so that the applicant would have had notice of the case it had to meet at the hearing.

Mr. Fisher then requested the Board to permit him to call the employee and examine her at the hearing. He stated, however, that he was not prepared to formulate an allegation of improper conduct against the applicant union because he had not completed his examination of the employee prior to the hearing and did not know whether the facts he might learn from her would warrant the making of such an allegation. The Board again drew the attention of Mr. Fisher to its Rules of Procedure, particularly sections 47 and 48, and pointed out that there was an onus on a party intending to make charges against another party to proceed expeditiously in that connection. Mr. Osler, counsel for the applicant, objected to the calling of the employee on the ground he had not had notice of the case he would have to meet in this respect and had not had an opportunity to prepare for it. In the circumstances the Board would not permit Mr. Fisher to examine his own witness solely for the purpose contemplated by him.

Mr. Fisher thereupon requested the Board to adjourn the proceeding so that he could complete his investigation and determine whether or not he would allege improper conduct on the part of the applicant in respect of the evidence of membership filed on behalf of this employee. In support of the request for an adjournment, Mr. Fisher relies on the fact that he had interviewed the employee only on the morning of the hearing, on September 9th, 1963, and had not had time to complete it. Mr. Osler opposed the granting of the adjournment on the ground that Mr. Fisher had not acted promptly upon discovery of the grounds on which he contemplated making an allegation. Mr. Osler stated that on Friday, September 6th, having been informed that the respondent was interrogating the employees, he contacted Mr. Fisher on that day to object to the conduct of the respondent. Mr. Fisher admits this and, moreover, advised the Board that the respondent had "placed its views" before the employee in question and she "explained to us the circumstances of the signing". However, he does not suggest that this took place at some time other than on Friday. We can only conclude, therefore, that Mr. Fisher and the

respondent had knowledge on Friday of the circumstances which Mr. Fisher now seeks to investigate further. It was incumbent on Mr. Fisher and the respondent, therefore, to act promptly to determine whether the circumstances were such that they should make an allegation of improper conduct against the applicant. It is significant that Mr. Fisher has offered no explanation to the Board for his failure to interview the witness until the morning of the hearing itself. The Board is of opinion that Mr. Fisher and the respondent did not act expeditiously in the circumstances. Accordingly, the Board is not prepared to grant the adjournment requested by Mr. Fisher.

Mr. Fisher also informed the Board that he had been advised that the employee in question had not paid money to the applicant for initiation fees. While he also stated that he believed, as a result of later advice from the employee, that she had made a payment, nevertheless he submitted her name as a "non-pay". In accordance with its practice the Board caused its usual inquiries to be made into this matter and the employee has stated that she paid one dollar on her own account to a representative of the applicant union at the time she applied for membership in that union."

6772-63-R: Sheet Metal Workers' International Association, Local Union 562 (Applicant) v. Jim Rogers Construction (Respondent).

Unit: "all employees of the respondent working at or out of Salem, engaged in the application of roofing material (other than wood shingles and metal), save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

6851-63-R: Chatham Construction Workers Association, Local No. 53, affiliated with the Christian Labour Association of Canada (Applicant) v. Ben Bruinsma and Sons Limited (Respondent).

Unit: "all employees of the respondent employed in the Counties of Essex and Kent, save and except foremen, persons above the rank of foreman and office staff. (19 employees in the unit).

On October 1, 1963 the Board endorsed the Record in part as follows:

"One of the issues raised at the hearing in this matter was whether the applicant was a trade union which according to established trade union practice pertains to the Construction Industry. The answer to this question involved consideration of fundamental Board policies and the Board wishes to take time to consider the matter. On the other hand the Board is ready to deal with the other issues raised in the case. In these circumstances the Board proposes to decide at this time all issues save the question as to whether the application is one falling under section 92 of The Labour Relations Act, which question is reserved for further consideration."

6873-63-R: The Lumber and Sawmill Workers' Union, Local 2995 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Cochrane Industries Limited (Respondent).

Unit: "all employees of the respondent at Cochrane, save and except foremen, persons above the rank of foreman and office staff." (85 employees in the unit).

6877-63-R: International Chemical Workers Union (Applicant) v. Witco Chemical Company, Canada, Limited (Respondent).

Unit: "all employees of the respondent at Brantford, save and except foremen, persons above the rank of foreman, office and sales staff, and persons regularly employed for not more than 24 hours per week." (11 employees in the unit).

6895-63-R: United Steelworkers of America (Applicant) v. Anthes Steel Products Limited (Respondent).

Unit: "all employees of the respondent in the Township of Etobicoke, save and except foremen, persons above the rank of foreman and office staff." (15 employees in the unit).

6904-63-R: International Union of Operating Engineers (Applicant) v. Robertson-Yates Corporation Limited (Respondent).

Unit: "all employees of the respondent operating and maintaining hoisting equipment at Hamilton, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

The Board endorsed the Record in part as follows:

"While the circumstances are admittedly somewhat unusual, nevertheless on the basis of the evidence contained in the Report, we find that William Filsinger and Joseph O. Howard were employees of the respondent on the dates material to this application.

However, because of the unusual circumstances we are disposed to confine the area to one much smaller than would normally be the case."

6916-63-R: Retail, Wholesale and Department Store Union, AFL.CIO:CLC (Applicant) v. Dominion Stores Limited (Respondent).

Unit: "all employees of the respondent in its retail stores at Chapleau, save and except store managers, persons above the rank of store manager, office staff, persons regularly employed for not more than 24 hours per week, and students hired for the school vacation period." (11 employees in the unit).

6917-63-R: National Union of Public Employees (Applicant) v. The Corporation of the County of Wellington (Respondent).

Unit: "all employees of the respondent at the county jail at Guelph, save and except the chief turnkey and persons above the rank of chief turnkey." (9 employees in the unit).

6920-63-R: International Woodworkers of America (Applicant) v. New Way Laminates Limited (Respondent).

Unit: "all employees of the respondent at New Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, and students hired for the school vacation period." (6 employees in the unit).

6931-63-R: The Canadian Union of Operating Engineers (Applicant) v. Robert Crean and Company Limited (Respondent).

Unit: "all stationary engineers in the boiler room of the respondent's plant at Toronto." (3 employees in the unit).

6947-63-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Electronics Corporation of America (Canada) Ltd. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff." (17 employees in the unit).

6956-63-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees Local Union No. 647, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Pembroke Creamery Limited (Respondent).

Unit: "all employees of the respondent at Pembroke, save and except the manager, persons above the rank of manager and office staff." (3 employees in the unit).

6957-63-R: International Woodworkers of America (Applicant) v. Brock Corrugated Carton Mfg. Co., Division of I. Gottlieb & Co. Ltd. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff." (52 employees in the unit).

(CIRCUMSTANCES OF THIS CASE)

6967-63-R: The Bricklayers, Masons and Plasterers International Union of America, Local No. 3 Guelph Ontario (Applicant) v. Artuso and Son (Respondent).

Unit: "all plasterers in the employ of the respondent in the Townships of Puslinch, Nichol, Pilkington, Guelph and Eramosa in the County of Wellington, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

6970-63-R: United Steelworkers of America (Applicant) v. Sudbury Ornamental Iron Works Limited (Respondent).

Unit: "all employees of the respondent at Sudbury, save and except foremen, persons above the rank of foreman, office and sales staff and outside erection crews." (9 employees in the unit).

7003-63-R: United Brotherhood of Carpenters & Joiners of America (Applicant) v. Continental Construction Company (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman. (11 employees in the unit).

7004-63-R: The United Brotherhood of Carpenters and Joiners of America Local Union 1669 (Applicant) v. Crossland Construction Limited. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the District of Kenora, save and except foremen and persons above the rank of foreman." (4 employees in the unit).

7014-63-R: International Chemical Workers Union (Applicant) v. Kimberly-Clark Canada Limited (Respondent).

Unit: "all employees of the respondent engaged in its warehousing operations in the Township of Etobicoke, save and except foremen, persons above the rank of foreman, and office staff." (20 employees in the unit).

7016-63-R: Local 280 of the Hotel and Restaurant Employees' and Bartenders' International Union, A.F.L. - C.I.O. - C.L.C. (Applicant) v. Rosenbaum and Estrein Investment Ltd., (Known as the Bloor Hotel) (Respondent).

Unit: "all waiters and tapmen in the employ of the respondent at Toronto, save and except managers and persons above the rank of manager." (5 employees in the unit).

7017-63-R: Warehousemen and Miscellaneous Drivers Local Union 419, affiliated with the International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers of America (Applicant) v. Gold Medal Products Ltd. (Respondent).

Unit: "all employees of the respondent at Toronto, save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (39 employees in the unit).

7024-63-R: United Electrical, Radio and Machine Workers of America (JE) (Applicant) v. Moder Handling Methods Ltd. (Respondent).

Unit: "all employees of the respondent at Dundas, save and except foremen, persons above the rank of foreman and office staff." (9 employees in the unit).

7028-63-R: Retail, Wholesale and Department Store Union AFL-CIO:CLC (Applicant) v. Manning Brothers Limited (Respondent).

Unit: "all employees of the respondent at Orangeville, save and except foremen and foreladies, persons above the rank of foreman or forelady, office and sale staff and persons regularly employed for not more than 24 hours per week." (57 employees in the unit).

7030-63-R: Teamsters Chauffeurs Warehousemen and Helpers Local No. 91, affiliated with International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers (Applicant) v. Dominion Building Materials Limited (Respondent).

Unit: "all employees of the respondent at Ottawa, save and except foremen, persons above the rank of foreman, office and sales staff, and persons covered by a subsisting collective agreement between the applicant and the respondent." (10 employees in the unit).

7033-63-R: The Bricklayers, Masons and Plasterers International Union of America, Local No. 3 Guelph Ontario (Applicant) v. Dunker Construction Limited (Respondent).

Unit: "all bricklayers and bricklayers' apprentices, stonemasons and stonemasons' apprentices in the employ of the respondent in the Townships of Puslinch, Nichol, Pilkingtⁿ, Guelph and Eramosa in the County of Wellington, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

7036-63-R: United Steelworkers of America (Applicant) v. Morissette Manufacturing & Sales Limited (Respondent).

Unit: "all employees of the respondent at its plant in Haileybury, save and except foremen, persons above the rank of foreman, office and sales staff." (10 employees in the unit).

7038-63-R: Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers, Local Union No. 230, of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Nickel Belt Cement Products Ltd. (Respondent).

Unit: "all employees of the respondent at Sudbury, save and except foremen, persons above the rank of foreman, office and sales staff." (10 employees in the unit).

7040-63-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Delta Electronics Limited (Respondent).

Unit: "all employees of the respondent in the Township of Etobicoke, save and except foremen, persons above the rank of foreman, office and sales staff, and persons regularly employed for not more than 24 hours per week." (64 employees in the unit).

7045-63-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Kenneth S. Fraser Co. Ltd. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff. (28 employees in the unit).

7049-63-R: International Hod Carriers' Building & Common Labourers' Union of America, Local No. 1059, London (Applicant) v. Schwenger Construction Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

The Board endorsed the Record in part as follows:

"The area claimed by the applicant is one which the Board has regarded as appropriate in a number of recent cases. The respondent makes no submission as to why the area should be restricted to the County of Middlesex. In these circumstances the Board finds that all construction labourers in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining."

7054-63-R: Local Union 2019 of The International Brotherhood of Electrical Workers AFL-CIO-CLC (Applicant) v. Public Utilities Commission of Burlington (Respondent).

Unit: "all employees of the respondent in its Water Division at Burlington, save and except foremen, persons above the rank of foreman, the chief operator, office staff and students hired for the school vacation period." (15 employees in the unit).

7069-63-R: Hotel and Restaurant Employees and Bartenders International Union, Hotel and Restaurant Employees Union Local 743 (Applicant) v. Vendomatic Services Limited (Respondent).

Unit: "all employees of the respondent's Food Management Division employed at the Norton Palmer Hotel, Windsor, save and except assistant manager, persons above the rank of assistant manager, chef, cashier, office staff and persons regularly employed for not more than 24 hours per week." (11 employees in the unit).

7088-63-R: International Union, United Automobile Aircraft and Agricultural Implement Workers of America (UAW) (Applicant) v. Tecumseh Products of Canada Limited (Respondent).

Unit: "all employees of the respondent at London, save and except foremen, persons above the rank of foreman, office and sales staff, and students hired for the school vacation period." (34 employees in the unit).

7095-63-R: International Union of Operating Engineers, Local 793 (Applicant) v. High and Heavy Rigging, Lakehead Limited (Respondent).

Unit: "all employees of the respondent in the District of Thunder Bay engaged in the operation of cranes, shovels, bulldozers and similar equipment, compressors and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (14 employees in the unit).

Certified Subsequent to Pre-Hearing Vote

6301-63-R: International Woodworkers of America (Applicant) v. Brunswick of Canada Limited (Respondent) v. International Union of Operating Engineers, Local 796 (Intervener).

Unit 1: "all stationary engineers and persons primarily engaged as their helpers employed by the respondent in Metropolitan Toronto and in the Township of Toronto, save and except chief engineers." (7 employees in the unit).
(INTERVENER CERTIFIED).

Unit 2: "all employees of the respondent in Metropolitan Toronto and the Township of Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, persons bound by a subsisting collective agreement between the respondent and the United Brotherhood of Carpenters and Joiners of America and persons covered by the Board's Certificate dated the 28th day of August, 1963, certifying the International Union of Operating Engineers, Local 796 as bargaining agent for certain employees of the respondent." (321 employees in the unit). (APPLICANT CERTIFIED).

(SEE INDEXED ENDORSEMENT PAGE 400)

Voting Constituency #1

Number of names on eligibility list	7
Number of ballots cast	7
Number of ballots marked in favour of applicant	0
Number of ballots marked in favour of intervener	7

Voting Constituency #2

Number of names on revised eligibility list	321
Number of ballots cast	303
Number of ballots spoiled	3
Number of ballots marked in favour of applicant	161
Number of ballots marked as opposed to applicant	139

6765-63-R: The Sudbury and District General Workers' Union Local 902 of the International Union of Mine Mill and Smelter Workers (Applicant) v. The Sudbury Mine Mill and Smelter Workers' Union Local 598 of the International Union of Mine Mill and Smelter Workers (Respondent).

Unit: "all office employees of the respondent at Sudbury, save and except office superintendent and persons above the rank of office superintendent." (3 employees in the unit).

Number of names on eligibility list	3
Number of ballots cast	3
Number of ballots marked in favour of applicant	3
Number of ballots marked in favour of Sudbury General Workers' Union Local #101 of the Canadian Labour Congress	0

6888-63-R: The Canadian Union of Operating Engineers (Applicant) v. William Neilson Limited (Respondent) v. International Union of Operating Engineers Local 796 (Intervener).

Unit: "all stationary engineers employed by the respondent in the boiler room and engine room at its Gladstone Avenue Plant, at Toronto, save and except the chief engineer." (15 employees in the unit).

Number of names on revised eligibility list	13
Number of ballots cast	13
Number of ballots marked in favour of applicant	13
Number of ballots marked in favour of intervener	0

6960-63-R: The Canadian Union of Operating Engineers
(Applicant) v. New Surpass Petrochemicals Limited (Respondent)
v. International Union of Operating Engineers Local 796
(Intervener).

Unit: "all stationary engineers employed in the boiler room
of the respondent at Scarborough." (3 employees in the unit).

Number of names on eligibility list	3
Number of ballots cast	3
Number of ballots marked in favour of applicant	3
Number of ballots marked in favour of intervener	0

Certified Subsequent to Post-Hearing Vote

5830-63-R: General Truck Drivers Local 879 International
Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers
(Applicant) v. Stoney Creek Haulage Limited (Respondent).

Unit: "all employees of the respondent employed at or
working out of Stoney Creek, save and except foremen, persons
above the rank of foreman and office staff." (6 employees
in the unit).

Number of names on revised eligibility list	6
Number of ballots cast	6
Number of ballots marked in favour of applicant	6
Number of ballots marked in favour of Stoney Creek Haulage Association Union	0

6384-63-R: National Union of Public Service Employees
(Applicant) v. The Sudbury Public School Board (Respondent).

Unit: "all employees of the respondent at Sudbury, save and except foremen, persons above the rank of foreman, office staff, matron, attendance officer, teaching staff, library clerical staff, librarians and library cataloguer, students employed during the school vacation period and persons regularly employed for not more than 24 hours per week." (56 employees in the unit).

On September 9, 1963 the Board endorsed the Record in part as follows:

"Having regard to the evidence before us and to our assessment of the credibility of the witnesses who testified, we are constrained to find that E. Olsen was the only member of management who concerned himself with the petition and that his participation in the circulation thereof did not occur until one day after all the signatures preceding his had been subscribed to the first page of the document. In our view of the evidence, Olsen did not have anything to do with the initiation of the petition, with obtaining signatures on the first page of the document nor later with the petition reaching and being filed with the Board.

While in the circumstances of this case we would not be prepared to find that the signatures obtained after Olsen's participation in the matter affected the union's evidence of membership, we must find that the signatures appearing on the first page of the document for persons in respect of whom the union has filed evidence of membership do qualify and weaken such evidence to the extent that we are required to seek confirmatory evidence of the desires of the employees through a representation vote."

Board Member D. M. Storey dissented and said:

"I dissent. The evidence shown that Foreman E. Olsen had prior knowledge that the petition was being circulated. After the first fourteen signatures were obtained he advised certain employees as to when it would be brought to their work stations and introduced one of the main petitioners to said employees. He could only have obtained this information from petitioner Mr. E. Dubreuil.

In addition his signature on the petition could not help but influence other employees into signing.

Furthermore the petition was openly circulated during working hours with the knowledge of at least some of the supervisory staff.

In view of all the above activities I would have given no weight to any signature on the petition.

I would have certified the applicant union."

Number of names on revised eligibility list	55
Number of ballots cast	55
Number of ballots segregated (not counted)	1
Number of ballots marked in favour of applicant	33
Number of ballots marked as opposed to applicant	21

6430-63-R: Brotherhood of Painters, Decorators, & Paper-hangers of America Local 1684 (Applicant) v. Dualed Pane Company Limited (Respondent).

Unit: "all employees of the respondent in Sandwich East Township, save and except foremen, persons above the rank of foreman, office and sales staff." (8 employees in the unit).

"Following the taking of the representation vote in this matter, the respondent filed a statement of objections. In dealing with the objections, the Board, in its endorsement of the record on October 30, 1963, said:

"By letter dated October 4th, 1963, the respondent alleged that employees of the respondent who had signed union cards had exerted pressure on one J. Parent, an employee of the respondent, in an effort to make him support the union. In support of its allegations the respondent submitted a handwritten letter dated October 3rd, 1963 which it alleges was written by J. Parent.

At the hearing before the Board on October 23rd, 1963 the respondent had no evidence to adduce in support of its charges. The Board, however, did allow the respondent to file in evidence a letter dated October 23rd, 1963 signed by Robert A. Hayes, President of the respondent company, which the respondent stated contained further particulars of the alleged offences. The respondent also filed a memorandum which it stated was based on the respondent's daily records of its knowledge of the activities of its employees and the union covering a period from June 27th, 1963 to July 23rd, 1963.

Upon considering the representations of the parties and the material filed by the respondent, the Board found that the respondent had knowledge of alleged pressure being exerted upon J. Parent in July 1963, prior to the taking of the representation vote on August 1st, 1963. Despite this knowledge, no charges were made following the taking of the representation vote, nor at the hearing of the Board on August 26th by either the respondent or the employee concerned. Rather the charges were only filed with the Board after the vote was counted on September 30th, 1963. In the Fleck Manufacturing Limited Case (C.C.H. Canadian Labour Law Reporter 716,236; C.L.S. 76-860) the Board stated as follows:

"It is incumbent on all parties to proceedings before the Board to investigate matters relevant to their cases as early as possible and if they intent to make allegations of improper or irregular conduct against another party to do so promptly. The object of this requirement, which finds expression in section 48 of the rules, is obviously to expedite and facilitate the hearing and processing of applications under the act and to avoid prejudice, delay, or embarrassment to the parties involved. Delays and last-minute allegations, which lead to adjournments or cause prejudice, embarrassment or unnecessary expense to the other parties, and which with reasonable diligence could have been made at a more timely stage of the proceedings will not be entertained except for good and sufficient cause."

Having regard to the policy of the Board and the circumstances of the instant case, the Board was of the opinion that it could not at this late date entertain the allegations of the respondent.

Accordingly, at the hearing on October 23rd, 1963 the Board dismissed the charges of the respondent."

Number of names on revised eligibility list	9
Number of ballots cast	10
Number of ballots segregated (not counted)	1
Number of ballots cast in favour of applicant	5
Number of ballots cast as opposed to applicant	4

6524-63-R: Trenton Gelatin Workers Association, Local Number 55, Affiliated with the Christian Labour Association of Canada (Applicant) v. Delft Gelatin Canada Limited (Respondent).

Unit: "all employees of the respondent at Trenton, save and except foremen, persons above the rank of foreman and office staff." (12 employees in the unit).

Number of names on revised eligibility list	13
Number of ballots cast	10
Number of ballots marked in favour of applicant	10
Number of ballots marked as opposed to applicant	0

6616-63-R: Retail, Wholesale and Department Store Union AFL:CIO:CLC: (Applicant) v. Fisher's Bread Company Limited (Respondent) v. General Truck Drivers' Union, Local 879 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Intervener).

Unit: "all employees of the respondent at Galt, save and except foremen, persons above the rank of foreman, office staff and students hired for the school vacation period." (44 employees in the unit).

(AGREEMENT OF THE PARTIES)

Number of names on revised eligibility list	31
Number of ballots cast	31
Number of ballots marked in favour of applicant	31
Number of ballots marked as opposed to applicant	0

On September 3, 1963 the Board endorsed the Record in part as follows:

"By certificates dated June 19th, 1957, and July 2nd, 1957, the Board certified the the intervener as the bargaining agent of the employees of the respondent affected by this application. While conciliation services were granted to these parties by the Board on November 7th, 1957, the Board was informed at the hearing in the instant matter that no collective agreement had been entered into between the intervener and the respondent. On the basis of all evidence before us, we are satisfied that the intervener took no steps since that time to bargain further with the respondent with respect to the employees of the respondent for whom it was certified as the bargaining agent. In these circumstances, the Board finds that the intervener must be taken to have abandoned the bargaining rights it acquired under the Board's certificates of June 19th, 1957, and July 2nd, 1957. Accordingly, the present application is properly before the Board."

6774-63-R: Metropolitan Toronto Housing Authority Employees, Local Union No. 767, National Union of Public Employees (Applicant) v. The Metropolitan Toronto Housing Authority (Respondent) v. Canadian Union of Operating Engineers, Local 101 (Intervener).

Unit: "all stationary engineers and persons primarily engaged as their helpers in the employ of the respondent in Metropolitan Toronto, save and except the chief engineer." (5 employees in the unit).

Number of names on revised eligibility list	5
Number of ballots cast	5
Number of ballots marked in favour of applicant	5
Number of ballots marked in favour of intervener	0

On September 10, 1963 the Board endorsed the Record in part as follows:

"Having regard to the decision of the Board in the Barnett-McQueen Case, (1959) CCH Canadian Labour Law Reporter, Transfer

Binder #16,139, CLS 76-646, the voting constituency in the circumstances must consist of persons who are employees included in the bargaining unit defined in the collective agreement between the respondent and the intervener effective September 16th, 1961, which is binding on the respondent."

6824-63-R: International Hod Carriers' Building & Common Labourers' Union of America, Local No. 1059, London (Applicant) v. Fraser-Brace Engineering Company Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman." (32 employees in the unit).

Number of names on revised eligibility list	24
Number of ballots cast	19
Number of ballots spoiled	1
Number of ballots marked in favour of applicant	15
Number of ballots marked as opposed to applicant	3

6876-63-R: Sportswear Local 199 I.L.G.W.U. (Applicant) v. Paradise Crinolines Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, foreladies, persons above the rank of foreman and forelady, sales staff and office staff." (78 employees in the unit).

(AGREEMENT OF THE PARTIES)

Number of names on revised eligibility list	67
Number of ballots cast	67
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	40
Number of ballots marked as opposed to applicant	25

Certification Dismissed - No Vote Conducted

5588-63-R: International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Warehousemen and Miscellaneous Drivers Union Local 419 (Applicant) v. Holland River Gardens Company Limited (Respondent).

Unit: "all employees of the respondent at its plant at Bradford, save and except foremen and supervisors, persons above the rank of foreman and supervisor, office and sales staff." (137 employees in the unit).

The Board endorsed the Record in part as follows:

"The respondent owns and operates an enterprise which in every relevant respect is the same as that carried on by Federal Farms Limited. For the reasons given in the Federal Farms Limited Case (Board File No. 5657-62-R) the Board finds that the employees of the respondent employed in its plant operations are not "persons employed in agriculture" within the meaning of section 2(b) of The Labour Relations Act.

During the course of its examination of the evidence of membership submitted by the applicant in this matter, the Board discovered what appeared to be a discrepancy with respect to the signature on the application for membership card filed by the applicant on behalf of Clara Stevens. The Board after conducting a preliminary investigation regarding the discrepancy set the matter down for further hearing to inquire into the circumstances surrounding the signing of the membership card.

The evidence before the Board is that Grace Stevens, the mother of Clara Stevens, printed her daughter's name on the application card which was filed for Clara Stevens. Grace Stevens was authorized to do so by her daughter. Grace Stevens was told by one John DeBest, a canvasser for the applicant, that she could sign the membership card for her daughter Clara. The evidence also reveals that DeBest collected the \$5.00 initiation fee for both Clara and Grace Stevens. The

collector indicated on the applications for membership and receipt for both Clara and Grace Stevens, however, is Ralph Wedge, a paid organizer of the applicant union. Wedge testified that when he forwarded the two cards to the union office he did not disclose that he was not the collector.

The applicant submitted Form 9, Declaration Concerning Membership Documents over the signature of M. A. Dodds, a representative of the applicant. Paragraph 3 of that document reads as follows:

"I have made inquiries concerning the collectors and, on the basis of such inquiries, I state that the persons whose names appear on the receipts or other acknowledgments of the payment on account of dues or initiation fees are the persons who actually collected the monies paid on account of dues or initiation fees and that each member, on whose behalf a receipt or an acknowledgment of payment is submitted has personally paid in money the amount shown thereon on his own behalf to the person whose name appears on his receipt or acknowledgment of payment as collector, except in the following instances." (the underlining is my own)

No exceptions are listed following the above paragraph. Although the evidence is that M. A. Dodds who signed Form 9 did not have knowledge that Ralph Wedge was not the collector of the \$5.00 initiation fee paid by Clara and Grace Stevens, Wedge was fully aware of this fact. In our view, Wedge must have been aware or should have been aware that by

signing as collector and then failing to disclose the true situation that the consequence of his actions would be to mislead the Board. The two membership cards are open to no other interpretation than that he was the collector of the initiation fees.

Moreover, his non-disclosure could only result in a false statement in Form 9 which the Board requires to be filed in every certification application.

It is obviously a practical impossibility for the Board to interview each employee on whose behalf documentary evidence of membership is filed in a certification application. The Board accordingly must place heavy reliance on the statements contained in Form 9 which it accepts at face value. Since the Board is compelled to rely to such an extent on Form 9 in considering the adequacy of the evidence of membership submitted by the applicant, any failure to make full disclosure of all the material facts must weigh heavily against the applicant. (See Webster Air Equipment Co. Ltd. Case, CCH C.L.L.R. Transfer Binder '55-'59 ¶16,110, C.L.S. 76-598.) Although in the instant case the evidence is that the signatory to Form 9 did not have knowledge with respect to the two cards in question, the seriousness of the non-disclosure of the true situation in Form 9, in our opinion, is in no way alleviated. As a responsible paid organizer of the applicant, Wedge's actions with regard to securing evidence of membership must be treated as the acts of the applicant. His misdeed lies not only in signing as collector, but more important in his failure to make full disclosure of the facts to the Board. While we do not believe that Wedge misled the Board by design, we cannot treat his non-disclosure merely as an oversight.

While stating that we do not find that the applicant deliberately attempted to mislead the Board, the consequences flowing from the applicant's actions could have no other result. It is of concern to the Board that it only became aware of the true situation as a result of making its own inquiry into a discrepancy with respect to a signature appearing on a membership application card filed by the applicant. While we have no evidence before us of any other irregularities with respect to the evidence of membership, in previous decisions the Board has refused to accept any of the evidence of membership where a single defective card has been submitted to the knowledge of a responsible union official. (See R.C.A. Victor Company Limited Case, CCH C.L.L.R. Transfer Binder '49-'54 ¶17,067, C.L.S. 76-412). In all the circumstances of this case the Board is not prepared to place reliance on any of the evidence of membership filed by the applicant.

The application, accordingly, is dismissed."

6545-63-R: National Union of Public Service Employees (Applicant) v. The Board of Education for the City of Sault Ste. Marie (Respondent). (25 employees).

The Board endorsed the Record as follows:

"The Board finds that the respondent is a municipality as defined in The Department of Municipal Affairs Act and that it has declared under section 89 of The Labour Relations Act that The Labour Relations Act shall not apply to it in its relations with "any of its employees save and except the caretaking staff". In view of the action of the respondent in making such a declaration with respect to the employees affected by this application, the Board has no jurisdiction to process this application further and the proceeding is accordingly terminated."

6849-63-R: International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada Local 669 Kirkland Lake & Timmins, Ontario (Applicant) v. Timmins Theatres Limited (Respondent). (31 employees).

7015-63-R: Local 593 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Applicant) v. The Hydro-Electric Power Commission of Ontario (Respondent). (47 employees).

(SEE INDEXED ENDORSEMENT PAGE 401)

Applications for Certification Dismissed Subsequent to Post-Hearing Vote

4205-62-R: International Chemical Workers Union A.F. of L. C.I.O. C.L.C. (Applicant) v. PCO Services Limited (Respondent).

Unit: "all employees of the respondent in the Province of Ontario, save and except district managers, metro managers, persons above the rank of district manager or metro manager, office and sales staff." (28 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 392)

Number of names on eligibility list	28
Number of ballots cast	27
Number of ballots marked in favour of applicant	13
Number of ballots marked as opposed to applicant	14

6724-63-R: International Molders and Allied Workers Union AFL.CIO.CLC. (Applicant) v. Hamilton Gear and Machine Company, Division of Turnbull Elevator Limited (Respondent).

Unit: "all office and clerical employees of the respondent at Toronto, save and except supervisors, persons above the rank of supervisor, secretary to the general manager, secretary to the comptroller, senior tool designers, senior estimators, salesmen, purchasing agent and buyers, students hired for the school vacation period, and persons covered by a subsisting collective agreement between the parties." (32 employees in the unit).

(AGREEMENT OF THE PARTIES)

Number of names on revised eligibility list	27
Number of ballots cast	27
Number of ballots marked in favour of applicant	8
Number of ballots marked as opposed to applicant	19

6725-63-R: Canadian Construction Workers' Union, Division No. 1, N.C.C.L. (Applicant) v. I.B. Purcell Limited (Respondent) v. International Union of Operating Engineers, Local 793 (Intervener).

Unit: "all employees of the respondent employed at or working out of Ottawa, save and except foremen, persons above the rank of foreman and office staff." (54 employees in the unit).

The Board endorsed the Record in part as follows:

"The intervener was certified as bargaining agent for some of the employees of the respondent in 1954. Conciliation services were never granted to the intervener and the respondent. The intervener and the respondent failed to negotiate a collective agreement. It has been several years since the intervener has attempted to negotiate a collective agreement with the respondent and during this time there has been absolutely no contact between the intervener and the respondent. In view of these circumstances and having regard to the representations of the parties, the Board finds that the intervener has abandoned its bargaining rights and the Board declares that the intervener no longer represents the employees of the respondent at Ottawa for whom it has heretofore been the bargaining agent."

Number of names on revised eligibility list	47
Number of ballots cast	46
Number of ballots marked in favour of applicant	18
Number of ballots marked as opposed to applicant	28

6822-63-R: International Molders and Allied Workers Union, AFL.CIO.CLC, Local 28 (Applicant) v. Designed Precision Castings Limited (Respondent).

Unit: "all employees of the respondent at Brampton, save and except foremen, persons above the rank of foreman, office and sales staff." (38 employees in the unit).

Number of names on revised eligibility list	33
Number of ballots cast	33
Number of ballots marked in favour of applicant	12
Number of ballots marked as opposed to applicant	21

6928-63-R: Local Union 304, International Union of United Brewery, Flour Cereal, Soft Drink and Distillery Workers of America, AFL-CIO-CLC (Applicant) v. Coca-Cola Ltd. (Respondent).

Unit: "all employees of the respondent at Peterborough, save and except foremen, special salesmen, persons above the rank of foreman and special salesman and office staff." (31 employees in the unit).

Number of names on revised eligibility list	28
Number of ballots cast	28
Number of segregated ballots (not counted)	1
Number of ballots marked in favour of applicant	10
Number of ballots marked as opposed to applicant	17

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING OCTOBER 1963

6952-63-R: General Truck Drivers Local 879 International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers (Applicant) v. Aldershot Contractors Equipment Rental Ltd. (Respondent). (21 employees in the unit).

7034-63-R: The United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Unalta Construction Limited (Respondent). (4 employees).

7047-63-R: Office and General Employees Association of Stewart-Warner Corporation of Canada, Limited (Applicant) v. Stewart-Warner Corporation of Canada, Limited (Belleville Office) (Respondent) v. SWAGO Employees' Guild (Intervener). (35 employees).

7057-63-R: Retail, Wholesale and Department Store Union, AFL-CIO:CLC (Applicant) v. Fisher's Bread Company Limited (Sales Depot at St. Catharines) (Respondent) v. General Truck Drivers Union, Local 879, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Intervener). (16 employees).

7128-63-R: International Association of Bridge, Structural & Ornamental Ironworkers Local 721 (Applicant) v. Hollenhauer Contracting Co. Ltd. (Respondent). (2 employees).

7132-63-R: Lumber and Sawmill Workers Union, Local 2693 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Unalta Construction Limited (Fort William) (Respondent). (4 employees).

APPLICATIONS FOR TERMINATION DISPOSED OF DURING OCTOBER 1963

6131-63-R: Robert Charles Cooper (Applicant) v. Dental Technicians Union Local 43, Toronto, I.J.W.U. (Respondent) v. Hirsh Laboratories Limited (Intervener). (9 employees).

(Re: Hirsh Laboratories Limited, Toronto, Ontario)

Number of names on revised eligibility list	9
Number of ballots cast	9
Number of ballots marked in favour of respondent	2
Number of ballots marked as opposed to respondent	7

6852-63-R: G. Denby (Applicant) v. International Union of Operating Engineers, Local 796 (Respondent). (GRANTED).

- and -

6853-63-R: J. Maich (Applicant) v. International Union of Operating Engineers, Local 796 (Respondent). (GRANTED).

- and -

6854-63-R: C. Noble (Applicant) v. International Union of Operating Engineers, Local 796 (Respondent). (GRANTED).

(Re: Gibson Brothers Limited, Toronto, Ontario)

The above matters are consolidated.

4 employees are involved in the above matters.

Number of names on eligibility list	4
Number of ballots cast	4
Number of ballots marked in favour of respondent	1
Number of ballots marked as opposed to respondent	3

6966-63-R: Janos Horvath (Applicant) v. The International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, U.A.W. (Respondent). (GRANTED) (12 employees).

(Re: Lakehead Industries Limited, Kingsville, Ontario)

6971-63-R: Murnie Elwood Britton on his own behalf and on behalf of the employees of Kingsgate Motors Limited (Applicant) v. Welders, Public Garage Employees, Motor Mechanics and Allied Workers Local Union 847, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondent). (GRANTED). (47 employees).

(Re: Kingsgate Motors Ltd.,
Metropolitan Toronto.

The Board endorsed the Record as follows:

"Subsequent to the Board's direction of October 10th, 1963, in which a representation vote was directed in this matter, the respondent informed the Board by a telegram dated October 18th, 1963, that it does not desire to continue to represent the employees in the bargaining unit.

The Board revokes paragraph 3, 4 and 5 of its decision of October 10th, 1963, and substitutes therefor the following:

Pursuant to section 43 (6) of The Labour Relations Act, the Board declares that the respondent no longer represents the employees of Kingsgate Motors Limited at Metropolitan Toronto for whom it has heretofore been the bargaining agent."

7035-63-R: Park Manor Motors Limited (Applicant) v. Welders, Public Garage Employees, Motor Mechanics and Allied Workers' Local Union 847, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Respondent). (DISMISSED). (5 employees).

The Board endorsed the Record as follows:

"On October 7th, 1963, the applicant made application for a declaration terminating bargaining rights of the respondent pursuant to the provisions of section 45 of The Labour Relations Act.

The respondent was certified on April 4, 1962 as bargaining agent for certain employees of the applicant.

The Board granted conciliation services to the respondent with respect to the employees of the applicant on November 12, 1962. A conciliation Board was appointed, and the report of the Board was released by the Minister on February 12, 1963.

It is alleged that since February 12, 1963, the respondent has not sought to bargain with the applicant.

Section 45(2) of The Labour Relations Act reads as follows:

"Where a trade union that has given notice under section 11 or section 40 or that has received notice under section 40 fails to commence to bargain within sixty days from the giving of the notice, or after having commenced to bargain but before the Board has granted a request for conciliation services, allows a period of sixty days to elapse during which it has not sought to bargain, the Board may, upon the application of the employer or of any of the employees in the bargaining unit and with or without a representation vote, declare that the trade union no longer represents the employees in the bargaining unit."

Although more than sixty days have elapsed since February 12, 1963 during which the respondent has not sought to bargain, the Board is of opinion that the applicant is precluded from seeking the relief under section 45(2) of the Act due to the fact that the Board has granted the respondent's request for conciliation services.

The application is accordingly dismissed."

APPLICATION UNDER SECTION 79 DISPOSED OF DURING OCTOBER 1963

6879-63-M: Rothmans of Pall Mall Canada Limited (Applicant) v. International Union of Operating Engineers, Local 796 (Respondent).

The Board endorsed the Record as follows:

"This is an application under section 79 (2) of The Labour Relations Act for a declaration that a certain named employee of the applicant is not an employee within the meaning of The Labour Relations Act.

The respondent was certified as bargaining agent for all stationary engineers employed in the power house of the respondent on February 10th, 1959.

The applicant and the respondent subsequently entered into a series of collective agreements covering the stationary engineers, the last agreement being entered into in the month of March, 1963. These proceedings were initiated by the applicant in the month of August, 1963.

The classification of the employee in question was included in the bargaining unit fixed by the Board in its original certificate in 1959 and has been included in the bargaining units in the various collective agreements entered into by the parties since that time. During the negotiations for the new collective agreement, the company raised with the union the status of the person with whom we are here concerned. The issue was not raised by the company in the proceedings before the conciliation officer which resulted in the signing of the current collective agreement. There is no evidence of an attempt by the applicant to renegotiate this matter with the respondent since the signing of the current collective agreement.

Having regard to the reasons for the decision of the Board in The Beaver Wood Fibre Co. Ltd. Case, C.C.H. Canadian Labour Law Reporter ¶16184, C.L.S. 76,711, the Board finds that the issue having been raised in the

negotiations and a collective agreement having been subsequently signed without the applicant in any way reserving to itself the right to raise the question before the Board at a later stage, the applicant must start afresh in dealing with such matter.

The application is therefore untimely and is accordingly dismissed.

In addition it would appear that the applicant as recently as the day prior to the hearing of this matter altered the duties and responsibilities of the person in question and the respondent was not apprised of this fact prior to the hearing and afforded an opportunity of negotiating this matter on the basis of such new duties and responsibilities. The Board would on this basis alone find the application to be untimely and would have dismissed the application."

APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING OCTOBER 1963

6939-63-U: The Hydro-Electric Power Commission of Ontario (Applicant) v. E. Alder et al (Respondent). (GRANTED).

The Board endorsed the Record as follows:

"Having regard to all the evidence, the Board finds that

E. Alder	W. Frew	H. Sanderson
A. Anderson	W. Gimson	W. Schell
D. Baker	M. Jennett	R. Sereres
R. Bellerby	L. Johnston	W. Shannop
W. Carr	J. Kearns	R. Strong
P. Clemen	A. Kerkey	T. Susak
D. Clemett	C. Logan	F. Teixeria
L. Cloutier	T. Lynn	D. Travis
D. Colvin	W. McKinnon	J. Watts
G. DeRoche	A. MacLeod	A. Whalen
G. Espelen	W. Palmateer	R. Wickware
H. Esteves	M. Payne	D. Wilde
W. Farr	M. Proulx	J. Yourth
R. France	A. Roske	R. Ziegel

did between September 17th, 1963 and September 19th, 1963 engage in a work stoppage at the Hydro-Electric Power Commission of Ontario project at Douglas Point.

The Board declares that this work stoppage was an unlawful strike contrary to the provisions of section 54 of The Labour Relations Act."

2032-63-U: The Hydro-Electric Power Commission of Ontario (Applicant) v. John Chartrand et al (Respondents). (GRANTED).

The Board endorsed the Record as follows:

"On the basis of all the evidence before it, the Board finds as follows:

- (a) That John Chartrand, Gordon Dixon, Robert J. Miller, Walter Murtokorpi, Milton Pratt, Thomas Tierney and Thos. Williams were employed as millwrights by The Hydro-Electric Power Commission of Ontario at its Douglas Point Project at all times material to this application;
- (b) That these employees were bound by a collective agreement between The Hydro-Electric Power Commission of Ontario and The Allied Construction Council, which came into effect as of the 1st day of February, 1962, and remained in effect until the 30th day of January, 1963;
- (c) That on the 26th day of June, 1963, this Board granted conciliation services to the parties with respect to the employees of The Hydro-Electric Power Commission of Ontario in the bargaining unit defined in this collective agreement;
- (d) That at the times material to this application the conciliation process had not been completed within the meaning of subsection 2 of section 54 of The Labour Relations Act;
- (e) That John Chartrand, Gordon Dixon, Robert J. Miller, Walter Murtokorpi, Milton Pratt, Thomas Tierney and Thos. Williams did on the 2nd, 3rd, 4th and 7th days of October, 1963, engage in a strike within the meaning of section

1(1)(i) of The Labour Relations Act at the Douglas Point Project of The Hydro-Electric Power Commission of Ontario; and

(f) That these employees had previously engaged in a strike on the 21st day of June, 1963, and again on the 4th, 5th and 8th days of July, 1963, and again on the 18th day of September, 1963.

In view of its findings herein, the Board declares that the strike engaged in by John Chartrand, Gordon Dion, Robert J. Miller, Walter Murtokorpi, Milton Pratt, Thomas Tierney and Thos. Williams on the 2nd, 3rd, 4th and 7th days of October, 1963, was contrary to section 54 (2) of The Labour Relations Act and was therefore unlawful."

APPLICATIONS FOR DECLARATION THAT LOCKOUT UNLAWFUL DISPOSED OF DURING OCTOBER 1963

6746-63-U: United Electrical, Radio and Machine Workers of America (Applicant) v. Amalgamated Electric Corporation Limited (Respondent). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE)

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING OCTOBER 1963

6558-63-U: Dunker Construction Limited (Applicant) v. James Ward (Respondent). (GRANTED).

The Board endorsed the Record as follows:

"On the basis of the evidence before us and having regard to the representations of counsel, it is clear that arguable questions of law arise in this matter.

The Board, therefore, consents to the institution of a prosecution of James Ward in this matter for the following offence alleged to have been committed:

that the said James Ward did, on or about the 19th day of June, 1963, contravene section 55 of The Labour Relations Act in that he did counsel or encourage an unlawful strike of employees of the applicant.

The appropriate documents will issue."

Board Member G.R. Harvey dissented and said:

"I dissent. In my opinion the evidence in this case does not establish the commission of any offence within the meaning of section 55 of The Labour Relations Act. Accordingly, I would refuse consent to the institution of a prosecution."

6559-63-U: Dunker Construction Limited (Applicant) v. United Brotherhood of Carpenters and Joiners of America Local 1940 (Respondent) (GRANTED).

The Board endorsed the Record as follows:

"On the basis of the evidence before us and having regard to the representations of counsel, it is clear that arguable questions of law arise in this matter.

The Board, therefore, consents to the institution of a prosecution of United Brotherhood of Carpenters and Joiners of America Local 1940 in this matter for the following offence alleged to have been committed:

that the said United Brotherhood of Carpenters and Joiners of America Local 1940 did, on or about the 19th day of June, 1963, contravene section 55 of The Labour Relations Act in that it did call or authorize an unlawful strike of the employees of the applicant.

The appropriate documents will issue."

Board Member G.R. Harvey dissented and said:

"I dissent. In my opinion the evidence in this case does not establish the commission of any offence within the meaning of section 55 of The Labour Relations Act. Accordingly, I would refuse consent to the institution of a prosecution."

6726-63-U: Direct Winters Transport Limited (Applicant) v. Allen Jones et al (Respondents). (DISMISSED).

The Board endorsed the Record as follows:

"We are of the opinion that the undertaking of the applicant involved in these proceedings is one that does not fall within the jurisdiction of this Board. The Board will therefore not process this application further."

6753-63-U: Brown & Root Ltd. (Applicant) v. Carroll R. Greeley, et al (Respondents) (GRANTED).

The Board endorsed the Record in part as follows:

"The Board consents to the institution of a prosecution against the respondents Carroll R. Greeley, Louis Hebert, Rene Campeau, Paul Germain, Eugene Gagne and Emile Cloutier for the following offence alleged to have been committed:-

that contrary to sections 54(1) and 69 of The Labour Relations Act the respondents and each of them who were employees of the applicant, Brown & Root Ltd., did between on and about the 15th day of August, 1963 until on and about the 16th day of August, 1963 engage in an unlawful strike at or near the job site of the applicant at Compressor Station 86 near Hearst, in the District of Cochrane.

The appropriate documents of consent will issue."

- and -

6790-63-U: Brown & Root Ltd. (Applicant) v. Steven Brodack (Respondent). (GRANTED).

The Board endorsed the Record in part as follows:

"The Board consents to the institution of a prosecution of the respondent for the following offence alleged to have been committed:-

that contrary to sections 55 and 69 of The Labour Relations Act the respondent did between on and about the 15th day of August, 1963 until on and about the 16th day of August, 1963 counsel, procure, support or encourage an unlawful strike at the job site of the applicant at Compressor Station 86, near the Town of Hearst in the District of Cochrane.

The appropriate document of consent will issue."

6791-63-U: Brown & Root Ltd. (Applicant) v. Phillip Clement (Respondent). (GRANTED).

The Board endorsed the Record in part as follows:

"The Board consents to the institution of a prosecution of the respondent for the following offence alleged to have been committed:-

that contrary to sections 55 and 69 of The Labour Relations Act the respondent did between on and about the 15th day of August, 1963 until on and about the 16th day of August, 1963 counsel, procure, support or encourage an unlawful strike at the job site of the applicant at Compressor Station 86, near the Town of Hearst in the District of Cochrane.

The appropriate document will issue."

- and -

6792-63-U: Brown & Root Ltd. (Applicant) v. The United Brotherhood of Carpenters and Joiners of America, Local 1669 (Respondent). (GRANTED).

The Board endorsed the Record in part as follows:

"The Board hereby consents to the institution of a prosecution against the respondent, The United Brotherhood of Carpenters and Joiners of America, Local 1669, for the following offence alleged to have been committed:-

that contrary to section 55 of The Labour Relations Act the respondent did between on or about the 15th day of August, 1963 and on or about the 16th day of August, 1963 call or authorize an unlawful strike by certain employees of the applicant at its project at Compressor Station 86 near the Town of Hearst, in the District of Cochrane.

The appropriate document of consent will issue."

6793-63-U: Brown & Root Ltd. (Applicant) v. Ulrich La Forge, et al (Respondents). (GRANTED).

The Board endorsed the Record in part as follows:

"The Board grants leave to the applicant to withdraw this application for consent to prosecute insofar as it relates to the following: Andre Goudrieault, Rosairllo Goudrieault, and Fernand Goudrieault.

The Board hereby consents to the institution of a prosecution against the following respondents, Ulrich La Forge, Rudolph E. Blais, Adrien Albert, Gerald Audet, Roland Genier, Albert Grouleau, Wilfred Breton, Amer Pepin, Raoul Martel, and Simon Nolet, for the following offence alleged to have been committed:-

That contrary to sections 54(1) and 69 of The Labour Relations Act the respondents and each of them, who were employees of the applicant, Brown & Root Ltd., did between on or about the 19th day of August, 1963 and on or about the 3rd day of October, 1963, engage in an unlawful strike at the job site of the applicant at Compressor Station 99 near Smooth Rock Falls, in the District of Cochrane.

The Board hereby further consents to the institution of a prosecution against the following respondents, Marcel Daigle and Denis Marin, for the following offence alleged to have been committed:-

That contrary to sections 54(1) and 69 of The Labour Relations Act the respondents and each of them, who were employees of the applicant, Brown & Root Ltd., did between on or about the 19th day of August, 1963 and on or about the 4th day of September, 1963, engage in an unlawful strike at the job site of the applicant at Compressor Station 99 near Smooth Rock Falls, in the District of Cochrane.

The appropriate documents of consent will issue."

6794-63-U: Brown & Root Ltd. (Applicant) v. General Workers' Union Local 2444 United Brotherhood of Carpenters and Joiners of America (Respondent). (GRANTED).

The Board endorsed the Record in part as follows:

"The Board hereby consents to the institution of a prosecution against the respondent, General Workers' Union Local 2444 United Brotherhood of Carpenters and Joiners of America, for the following offence alleged to have been committed:-

that contrary to section 55 of The Labour Relations Act the respondent did between on or about the 19th day of August, 1963 and on or about the 3rd day of October, 1963 call or authorize an unlawful strike by certain employees of the applicant at its project at Compressor Station 99 near Smooth Rock Falls, in the District of Cochrane.

The appropriate document of consent will issue."

- and -

6795-63-U: Brown & Root Ltd. (Applicant) v. Arthur Gauthier (Respondent). (GRANTED).

The Board endorsed the Record in part as follows:

"The Board consents to the institution of a prosecution of the respondent for the following offence alleged to have been committed:-

That contrary to sections 55 and 69 of The Labour Relations Act the respondent did between on and about the 19th day of August, 1963 until on and about the 3rd day of October, 1963 counsel, procure, support or encourage an unlawful strike at the job site of the applicant at Compressor Station 99 near Smooth Rock Falls, in the District of Cochrane.

The appropriate document of consent will issue."

On September 17, 1963 the Board endorsed the Record in each of the above matters as follows:

"The respondent by letter dated September 3rd, 1963 forwarded to the Board a Notice of Intention to Object on constitutional grounds to this application for consent to institute prosecution wherein they challenged the jurisdiction of the Board and alleged that this matter comes within the exclusive jurisdiction of the Parliament of Canada.

This matter came on for hearing on September 13th, 1963 and at the hearing David Lewis, Q.C. appeared and requested the Board to adjourn this matter. Mr. Lewis advised the Board that he had been retained through the solicitors for the respondent on September 11th, 1963, two days prior to this hearing and stated that this period of time was not sufficient to permit him to prepare a proper

argument on the constitutional issue. Mr. Lewis further stated that his instructions were such that he was unable to advise the Board whether or not he was appearing on behalf of some or all of the respondents, and he failed to identify any of the respondents for whom he was acting.

In view of the long standing policy of the Board not to grant adjournments except on consent or in exceptional circumstances, the fact that the constitutional issue was raised by the respondent through their solicitors on September 3rd, 1963, the fact that Mr. Lewis was unable to identify the respondents for whom he appeared, the fact that Mr. Lewis was unable to argue the merits of the constitutional issue because of the respondents' delay in instructing him, and the fact that the applicant refused to consent to the adjournment, the request for an adjournment is therefore denied and if any hardship results to the respondents, they must be considered to be the authors of their own misfortune.

The Board having denied the request for an adjournment at the hearing, Mr. Lewis stated that in the circumstances set out above, he was unable to properly represent his clients and he withdrew from the hearing room.

The respondents having failed to call evidence in support of their objections to the jurisdiction of the Board and no argument having been adduced in support of their objections, the Board is not satisfied that this matter is not one within its jurisdiction. The objections are therefore dismissed."

6840-63-U: United Brotherhood of Carpenters & Joiners of America (Applicant) v. Fraser-Brace Engineering Company Limited (Respondent). (GRANTED).

The Board endorsed the Record as follows:

"The Board consents to the institution of a prosecution against the respondent for the following offence alleged to have been committed: that the said respondent did contravene section 50 of The Labour Relations Act in that on August 28th, 1963 it refused to employ one Roy Rau because he was a member of a trade union.

The appropriate documents will issue."

Board Member H.F. Irwin dissented and said:

"I dissent. In the circumstances of this case, I would not have consented to the institution of a prosecution against the respondent."

6934-63-U: General Truck Drivers' Union, Local 879 (Applicant) v. Moore McCleary Limited (Respondent). (DISMISSED).

6963-63-U: Pernfuss Roofing Contractors (Applicant) v. Joseph Molnar, et al (Respondents). (WITHDRAWN).

6964-63-U: Pernfuss Roofing Contractors (Applicant) v. Sheet Metal Workers' International Association (Respondent). (WITHDRAWN).

6978-63-U: United Steelworkers of America (Applicant) v. Jiger Corporation Ltd. (Respondent). (GRANTED).

The Board endorsed the Record as follows:

"The Board consents to the institution of a prosecution against the respondent, Jiger Corporation Ltd., in this matter, for the following offence alleged to have been committed:

that the said Jiger Corporation Ltd. did contravene section 50 (a) of The Labour Relations Act, in that it did refuse to continue to employ Heiner Quaddel because he was a member of a trade union and was exercising his rights under The Labour Relations Act, from and after the 16th day of April, 1963.

The appropriate document of consent will issue."

APPLICATIONS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE)
DISPOSED OF DURING OCTOBER 1963

6556-63-U: Saverio Greco (Complainant) v. Frank Amis (Respondent).

6697-63-U: United Steelworkers of America (Complainant) v. Seaway Plate & Structural Steel Limited (Respondent).

The Board endorsed the Record as follows:

"The Board having been notified by the parties that they have reached a settlement of the matter complained of, the terms of which are on file with the Board, this proceeding, upon consent of the parties, is hereby terminated."

6760-63-U: Lumber & Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters & Joiners of America (Complainant) v. Jerry Flook (Respondent.)

6761-63-U: Lumber & Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters & Joiners of America (Complainant) v. International Hod Carriers Building and Common Labourers Union of America, Local 607 (Respondent).

6762-63-U: Lumber & Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters & Joiners of America (Complainant) v. W. W. Carlson (Respondent).

6763-63-U: Lumber and Sawmill Workers Union, Local 2693 of the United Brotherhood of Carpenters and Joiners of America (Complainant) v. Refinery Engineering Limited (Respondent).

6775-63-U: Warehousemen and Miscellaneous Drivers, Local Union 419, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Complainant) v. Yolles Furniture Company Limited (Respondent).

6800-63-U: The Hotel, Clubs, Restaurants, Taverns Employees Union Local 261, Chartered by The Hotel Restaurant Employees and Bartenders International Union (Complainant) v. Laurentian Club Incorporated (Respondent).

The Board endorsed the Record as follows:

"The complainant having notified the Board that the parties have settled the matter complained of, this complaint is withdrawn on the request of the complainant by leave of the Board."

6820-63-U: United Electrical, Radio and Machine Workers of America (UE) (Complainant) v. J. H. Babcock & Son Co. Ltd. (Respondent).

The Board endorsed the Record as follows:

"This is a complaint for relief under section 65 of The Labour Relations Act.

The complainant alleges that the aggrieved person, Kenneth Simpkins, was discharged by the respondent because he was a member of the complainant trade union contrary to the provisions of sections 48 and 50 of The Labour Relations Act. The respondent alleges that Simpkins was discharged, not simply for being absent from work on the afternoon of August 28th, 1963 without permission, but also because he had a poor record. More particularly the respondent alleges that Simpkins failed to respect the respondent's materials and property and had a complete disregard for management's rights.

The Board finds that the respondent had knowledge that Simpkins was a member of the complainant trade union. No evidence was adduced at the hearing which would suggest to the Board that Simpkins did not show a proper respect for the respondent's materials or property. The respondent, however, did adduce evidence with respect to Simpkins' absentee record over the past three years. Having regard to that record, the explanation for certain absences and the lack of any warning concerning absenteeism, the respondent has failed to persuade the Board that Simpkins' absentee record had any bearing in his discharge by Oscar Babcock on August 29th, 1963. While absence from employment without permission may well be justifiable grounds for discharging an employee, having regard to the pattern of conduct of Oscar Babcock relating to the union and all the surrounding circumstances of this case, the complainant has satisfied us that Kenneth Simpkins was discharged contrary to section 50 of The Labour Relations Act.

At the time of his discharge Kenneth Simpkins was working a 44-hour week and earning \$1.35 per hour. On the evidence we find that he made prompt and reasonable efforts to mitigate his loss of earnings by registering with the Unemployment Insurance Commission and seeking other employment. At the time of the hearing on September 26th, 1963, Simpkins had secured other employment, the earnings from which are taken into account in making our determination.

Our determination of the action to be taken by the respondent is as follows:-

- (1) The respondent shall forthwith reinstate and employ Kenneth Simpkins to the same or like employment with the same wages and employment benefits as he had, and received, prior to and up to the time of his discharge on August 29th, 1963.
- (2) As compensation for his loss of wages and employment benefits from August 29th, 1963 to and including September 26th, 1963, the respondent shall forthwith pay Kenneth Simpkins \$122.60.
- (3) The respondent and complainant shall meet forthwith with a view to agreeing on the amount of loss of earnings and employment benefits, if any, now sustained or which may hereafter be sustained by Kenneth Simpkins between the date of the hearing on September 26th, 1963, and the date of his actual re-employment by the respondent. In default of an agreement between the parties within 7 days after the release of this determination or within such further period as the parties may mutually agree upon, the amount of any such further compensation payable, if any, will be determined by the Board upon the motion of either party for a further hearing for that purpose."

6872-63-U: Donald R.E. Harrington (Complainant) v. A.K. Rowntree and E. McNames (Respondents).

The Board endorsed the Record as follows:

"As the Board pointed out in the National Sea Products Limited Case, (1961) C.L.R.B. Monthly Report, May, 1961, p.62:

In our opinion, section 65 is a procedural and remedial section. It does not in itself establish a substantive right. The Board's jurisdiction to grant relief under section 65 is limited to cases in which the aggrieved person has been refused employment, discharged, discriminated against, threatened, coerced, intimidated or otherwise dealt with contrary to some specific provisions of The Labour Relations Act.

On considering the report of the field officer, Mr. H. K. McKay, made in the course of his inquiry into the complaint in this matter, we are of opinion that the evidence does not disclose a contravention of any provision of The Labour Relations Act. The attention of the complainant is directed to the Board's decision in the Heist Industrial Services Case, (1962) C.C.H. Canadian Labour Law Reports ¶16,263; C.L.S. 76-912.

The complaint is dismissed."

6894-63-U: Delta Steel Fabricating Co. Ltd. (Complainant) v. A. Desbiens, representative United Steelworkers of America (Respondent).

(SEE INDEXED ENDORSEMENT PAGE 406)

6922-63-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (U.A.W.) (Complainant) v. Canadian Tire Corp. Associate Store #121 C. H. Huot Ltd. (Respondent).

6930-63-U: Sportswear Union Local 199 I.L.G.W.U.
(Complainant) v. Paradise Classics Sportswear (Respondent).

The Board endorsed the Record as follows:

"On considering the statements made to the Field Officer, Mr. H.K. McKay, in the course of his inquiry into the complaint in this matter we find that the evidence in this case does not warrant further inquiry into this complaint being made by the Board.

The complaint is therefore dismissed."

6932-63-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (U.A.W.) (Complainant) v. Canadian Tire Corp. Associate Store #121 G.H. Huot Ltd. (Respondent).

6944-63-U: United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, A.F.L.-C.I.O., C.L.C. (Complainant) v. Coca-Cola Limited (Ottawa Plant)(Respondent).

6945-63-U: International Hod Carriers', Building and Common Labourers Union of America, Local 527 (AFL-CIO) (CLC) (Complainant) v. M. J. Lafourture Construction Limited (Respondent).

6959-63-U: United Steelworkers of America (Complainant) v. Jiger Corporation Ltd. (Respondent).

The Board endorsed the Record as follows:

"This complaint is brought on behalf of Corrie Fewson and Charles Koroszi, former employees of the respondent, Jiger Corporation Ltd. Both of these employees together with four others were discharged from their employment with the respondent on September 20th, 1963. Prior to his discharge, Corrie Fewson had been employed as a machinist helper, earning \$1.65 per hour for a 42½ hour week. In spite of his efforts to obtain other employment, Fewson was still unemployed at the time of the hearing held on October 24th, 1963. At the time of his discharge, Charles Koroszi was employed as a machinist but there is no evidence as to the amount of his earnings or whether he has been otherwise employed or what he has earned, if anything, since his employment was terminated on September 20th, 1963.

We are satisfied on the evidence before us that Corrie Fewson and Charles Koroszi were discriminatorily discharged from their employment because they were members and active supporters of the complainant union.

Having regard to the amount of his weekly earnings and to the fact that he took all reasonable steps to mitigate his loss by seeking other employment, but without success, we find that Corrie Fewson has suffered loss of earnings in the sum of \$336.58.

In view of the absence of any evidence as to his loss of earnings, between the date of his discharge and the hearing, counsel for the complainant indicated that the complainant was abandoning its claim for compensation for Charles Koroszi for this period.

The Board's determination as to the action to be taken by the respondent, Jiger Corporation Ltd., is as follows:-

- (a) As compensation for his loss of wages and employment benefits from September 20th, 1963, to October 24th, 1963, the date of the hearing, the respondent shall forthwith pay Corrie Fewson the sum of \$336.58.
- (b) The respondent shall forthwith employ and reinstate Corrie Fewson and Charles Koroszi in the same or like positions with the same wages and employment benefits as they had and received prior to and up to their discharge on September 20th, 1963.

(c) The respondent and the complainant shall meet forthwith with a view to agreeing on the amount of compensation payable for loss of earnings and other employment benefits, if any, suffered by Corrie Fewson and Charles Koroszi between the date of the hearing held on October 24th, 1963, and the date of their actual re-employment by the respondent. In default of an agreement between the parties within 7 days after the release of this determination or within such further time as they may mutually agree upon, the amount of such compensation payable, if any, will be determined by the Board upon the motion of either party for a further hearing for that purpose."

6961-63-U: Retail Clerks International Assoc. (Complainant) v. Dominion Stores Ltd. (Respondent). (WITHDRAWN).

7115-63-U: United Electrical, Radio and Machine Workers of America (UE) (Complainant) v. Kenneth S. Fraser Co. Ltd. (Respondent).

CERTIFICATION INDEXED ENDORSEMENTS

4205-62-R: International Chemical Workers Union A.F. of L. C.I.O. C.L.C. (Applicant) v. PCO Services Limited (Respondent). (DISMISSED OCTOBER 1963).

On March 18, 1963 the Board endorsed the Record in part as follows:

"The respondent provides a pest control service to domestic and commercial establishments in Ontario. Its service takes the form of either a continuing service pursuant to contract, as in the case of restaurants, or a "one shot deal", as in the case of residences and apartments.

The respondent has divided its operation into a number of territories with a "branch manager" in charge of each. In addition, at the time the application was made, the respondent employed key men-specialists, apprentice service-salesmen, pilot service-salesmen and a plant shipper. The respondent submits that the branch managers exercise managerial functions within the meaning of section 1 (3) (b) of The Labour Relations Act and also are included in the classification of "sales staff". The respondent also submits that "apprentice salesmen" come within the classification of "sales staff". The applicant submits that Douglas Sheppard is a supervisor and exercises managerial functions within the meaning of the Act.

For the purposes of the Examiner's inquiry into the duties and responsibilities of branch managers, the parties agreed that the evidence of R. Bull would be accepted as setting out the duties and responsibilities of branch managers employed outside Toronto and that of W. Smith with respect to branch managers in Toronto. Their evidence is that a branch manager is required to work a minimum of 173 hours per month on the service work in his territory. At the end of each day he records his hours on a daily report form on which he also sets out the number of calls, the money collected, the receipts invoiced and the time of starting and finishing. He forwards these report forms to head office. On any time he has remaining from his service work, he looks for new accounts and sells the respondent's products and equipment in his territory. He is paid a salary plus a commission; the latter is calculated on new business and sales of products and equipment with a deduction for lost accounts. Mr. Bull's evidence is that he operates from his own house, that some contracts are paid in advance to head office while others are invoiced from there, and that he does not keep a bank account in the name of the respondent but remits all monies collected by him to head office. Mr. Smith's evidence is that he works "from the plant in Toronto" and receives his orders from head office.

While the testimony of Mr. Bull and Mr. Smith with respect to new accounts is that the branch manager fixes the job price and signs the contract on behalf of the respondent, nevertheless he uses a standard contract form supplied by the respondent and follows a general price structure since there are "basic charges" to be taken into account in settling the price. In this connection Mr. Smith's evidence is that, in the case of a restaurant service call, there is a minimum charge and he could not charge less than this amount unless authorized by his superior. According to the evidence of Mr. Bull, a branch manager does not even retain a copy of a new contract in his own possession but must forward it to head office. With respect to these matters, therefore, it appears that a branch manager has little or no scope for the exercise of independent judgment in quoting job prices. Rather it appears that his responsibilities in this respect involve little more than the calculation of final costs on the basis of fixed prices for particular matters.

In a document dated February, 1962, entitled "Service Salesman Operating His Own Branch", the respondent provides that "the hiring and interviewing of apprentice operators will be a joint responsibility of the Branch Manager and General Service/Sales Manager". Mr. Bull, who has been in the employ of the respondent for 3½ years and a branch manager since February, 1960, testified that he has no one working with him now but had had three apprentices during the earlier part of 1962. These apprentices were with him only for a week or ten days and are not now employed with the respondent. Mr. Smith, who has been in the employ of the respondent for almost four years, became a branch manager in February, 1962, and had an apprentice, Wayne King, who started with the respondent in January, 1962, that is, before Mr. Smith became a branch manager. Mr. Smith has had no other apprentices working with him between February and July, 1962, but a Mr. Forbes, who has since become a branch manager, worked with him for a couple of days. Having regard to

the evidence of Mr. Bull and Mr. Smith as to their participation in the hiring and interviewing of apprentices, it is clear that the branch manager, while he may participate in the interviewing of apprentices, does not have authority to hire them. In the case of Mr. Bull, the first two trainees were interviewed by Mr. Gartner (general service manager) before they were hired and their choice was "a mutual agreement" between Mr. Gartner and Mr. Bull. While Mr. Bull hired the third, he hired him "subject to head office approval". These three persons, described as "trainees" by Mr. Bull, were hired on a "trial" basis only. Two of them "quit" while Mr. Bull told the third that he was "unsuitable". It is apparent, therefore, that in reality, Mr. Bull has never had an apprentice working with him during the long period that he has been a branch manager. Moreover, there is no evidence that he has authority to discharge apprentices or that he has in fact done so. In the case of Mr. Smith, his only apprentice (Wayne King) was hired before he became a branch manager. Indeed Mr. King was not only interviewed by Mr. Gartner and Mr. Smith but also by Mr. Brennan, the president of the respondent company. It is obvious, therefore, that Mr. Smith's part in the interviewing of Mr. King was not done in the performance of the duties of a branch manager. With respect to the hiring of Mr. Forbes, who worked with Mr. Smith "for a couple of days", there is again no evidence whatsoever that Mr. Smith took any part in it nor, indeed, that he regarded Mr. Forbes as an apprentice at all. In so far as the relationship between the branch manager and apprentices is concerned, it appears that, with respect to both hiring and supervision, the branch manager exercises an authority similar to that exercised by a skilled mechanic over his helper.

Testimony was given by Mr. Bull and Mr. Smith with respect to the granting of salary increases to apprentices. Mr. Bull, of course, has had no occasion to deal with salary increases for apprentices. He says, however, that Mr. Gartner gave him a list of increases for which apprentices would have been eligible during the first year of their employment which were to be given subject to a trainee's improvement. The evidence of Mr. Smith, on the other hand, establishes that a branch manager does not have authority to grant the increases himself. While Mr. Smith on two occasions recommended increases, he could not say that either was granted by the respondent. Actually, in the case of Mr. Forbes, it was not granted at the time of Mr. Smith's recommendation. On the basis of their testimony, we are satisfied that, for all practical purposes, the branch manager does not have authority to recommend increases for apprentices.

The hiring of "casual labour" is referred to by Mr. Bull but not by Mr. Smith. According to Mr. Bull, "extra help" may be needed for a particular job. However, over the past $2\frac{1}{2}$ years, he has required such help on only four occasions. While he hired casual labourers on these occasions, their time was sent to head office and they were paid by the respondent at an hourly rate laid down by the respondent.

On the basis of the evidence before us, it is clear that the primary and almost exclusive function of a branch manager is to do the service work in his territory. Accordingly, we find that branch managers are not employees included in the classification of "sales staff". The issue for the Board, therefore, is whether they exercise managerial functions within the meaning of section 1(3)(b) of The Labour Relations Act. With respect to the quotation of job prices and the making of contracts, the exercise of independent judgment by a branch manager is so slight that it cannot be taken to constitute the exercise

of a managerial function. With respect to the hiring, supervision and promotion of apprentices, the role of a branch manager is again so slight, casual and intermittent that it cannot be construed as a managerial function. We, therefore, find that branch managers do not exercise managerial functions within the meaning of section 1 (3) (b) of The Labour Relations Act."

Board Member C.C. Young dissented and said:

"I dissent in so far as the finding that the persons described as branch managers are employees within the meaning of the Act is concerned.

It is clear from the Examiner's report in this matter, and from the fact that the parties were satisfied to have the Board reach its decision on the evidence contained in that report, that there was little disagreement between the parties as to the facts and that the dispute concerned the interpretation to be given to these facts and to section 1 (3) (b) of The Labour Relations Act.

At the hearings before the Examiner, the parties agreed to the submission of certain exhibits and further agreed to accept the evidence of R. Bull and W. Smith as representative of that of the branch managers located outside and inside Toronto, respectively.

It is clear from the exhibits that in February of 1962, some six months before the commencement of these proceedings, the status of the branch managers was described and defined in writing and that the branch managers were conversant with the document (Appendix D) entitled "Service Salesman Operating his own Branch", dated February 1962, which set out the duties and responsibilities of each of them. Paragraph 2 of this document provides as follows:

"2. He is in charge of all service and will manage the affairs of his own territory."

Paragraph 7 provides in part as follows:

"7..... His responsibilities are:

d) supervise his apprentices."

Paragraph 11 provides as follows:

"11. The hiring and interviewing of apprentice operators will be a joint responsibility of the Branch Manager and General Service/Sales Manager."

From the evidence of Bull and Smith it is clear that these responsibilities have been fully assumed by the branch managers. Each testifies that his responsibilities included the solicitation of new business and the entering into contracts in the name of the company. Smith further testifies that he set the price on the contracts and that the contracts did not have to be checked before becoming binding on the company, and Bull's evidence was that he quoted on the prices of the job and that his quotation has never been subject to confirmation."

Each testified to his participation in the hiring of other employees. Bull has hired casual help on four occasions in the past two and a half years and this was done on his own initiative. In 1962 he participated (pursuant to paragraph 11 of appendix D) in the selection of two trainees for his branch, and hired a third subject to head office approval. All of these trainees were on a probationary period and would, subject to their progress, have been eligible for salary increases, and the decision on this question would have been Bull's, but the situation never arose since two quit and he (Bull) fired the third for being unsuitable.

Smith, too, participated in hiring, and, at the conclusion of the probationary period recommended a salary increase for one man whom he had hired and, he believes, his recommendation was followed. Documentary evidence of another recommendation by Smith that a subordinate's salary be increased was identified and filed with the Examiner.

In view of this express evidence of participation in the interviewing and hiring of employees, including the evidence of direct hiring on some occasions, together with the evidence of the degree to which the branch managers are required to report on the progress of employees under their direction and are free to recommend salary adjustments, and having regard to the independent judgment they are required to exercise in quoting prices and entering into binding contracts, I have no hesitation in finding that these persons are not employees within the meaning of The Labour Relations Act.

On September 11, 1963 the Board further endorsed the Record in part as follows:

"In its direction of March 18th, 1963, the Board directed that Douglas Sheppard was eligible to vote in the representation vote to be held in this matter. On the taking of the representation vote on April 5th, 1963, the applicant challenged the eligibility of Douglas Sheppard to vote on the grounds that his duties had changed prior to the taking of the vote. The returning officer, accordingly, segregated the ballot of Douglas Sheppard. On June 26th, 1963, the Board appointed an examiner to inquire into and report to the Board on the duties and responsibilities of Douglas Sheppard on the date on which the representation vote was taken. On September 11th, 1963, a hearing was held by the Board in connection with the representations filed by the respondent concerning the report of the examiner.

On the basis of all the evidence before it and having regard to the representations of the parties, the Board finds that the duties and responsibilities of Douglas Sheppard had not changed prior to the taking of the representation vote on April 5th, 1963, and declares that Douglas Sheppard was eligible to vote in the representation vote held in this matter on that date.¹ There were, therefore, 24 employees eligible to vote. Twenty-three ballots, including the ballot of Douglas Sheppard which was segregated and not counted, were cast on the taking of the vote. Twelve ballots were cast in favour of the applicant and ten ballots were cast in opposition to the applicant. The result of the vote, therefore, would be affected by the ballot of Douglas Sheppard. A direction to count his ballot, however, would destroy its secrecy. The Board, following its usual practice, accordingly directs that a new representation vote be taken of the employees of the respondent in the bargaining unit hereinafter determined.

6301-63-R: International Woodworkers of America (Applicant) v. Brunswick of Canada Limited (Respondent) v. International Union of Operating Engineers, Local 796 (Intervener).
(GRANTED OCTOBER 1963).

The Board endorsed the Record in part as follows:

"Following the taking of the pre-hearing representation vote, the Board received a statement from a group of employees in the Golf Club Department of the respondent objecting to the inclusion of their department in any bargaining unit which the Board might deem to be appropriate in this matter. The employees of the respondent having had no previous opportunity to make representations with respect to the description of the bargaining unit, the Board directed a hearing to permit the employees who filed the statement of objections to make their representations.

Having regard to all the evidence and the representations made by the parties, the Board is not satisfied that the Golf Club Department of the respondent should be excluded from the bargaining unit in this matter."

7015-63-R: Local 593 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Applicant) v. The Hydro-Electric Power Commission of Ontario (Respondent). (DISMISSED OCTOBER 1963).

The Board endorsed the Record as follows:

"The respondent, The Hydro-Electric Power Commission of Ontario, and the Allied Construction Council entered into a collective agreement which came into effect as of February 1, 1962 and remained in effect until January 30, 1963. The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada was a member of the Allied Council and a signatory to the agreement.

Notice of desired amendments was served on the respondent by the Allied Council on December 12, 1962 and in due course the Council applied to this Board for conciliation services. The Council's request was granted on June 26, 1963.

On September 16, 1963 the United Association notified the respondent that it had withdrawn from the Allied Council.

The present application for certification by Local 593 of the United Association was filed on October 1, 1963. This application covers certain employees of the respondent working at its Douglas Point Project, one of the sites covered by the collective agreement heretofore referred to. It appears that the Allied Council and the respondent have come to terms with respect to a new collective agreement, that the Council has signed the agreement, that as

of the 28th of October, the respondent had not formally signed the agreement, but as of that date the matter was still in the hands of the conciliation officer, and that before the signing of any collective agreement and while the matter was in the hands of the conciliation officer, the United Association withdrew from the Allied Council.

There is no suggestion before us that at any time prior to September 16, 1963 the Allied Council did not continue to act as the sole and exclusive agent of the United Association. In any event there is no suggestion that the respondent was served with any notice to the contrary prior to September 16th or was aware, before that date, of any severance of relationship between the Council and the United Association. In these circumstances sections 40(4) and 38(4) of The Labour Relations Act came into play.

This being the case, it seems clear that the grant of conciliation services on June 26, 1963 was a grant of conciliation services affecting, *inter alia*, the United Association. It most certainly was a grant affecting the employees concerned in the present application for certification which employees were in the bargaining unit defined in the collective agreement in respect to which notice had been given under section 40 of the Act on December 12, 1963. Section 46(2) of the Act is therefore applicable to the facts of this case and under its terms the present application is clearly untimely.

In conclusion we think it desirable that we should record our views that the withdrawal of the United Association from the Allied Council, during the period when the conciliation officer was still seized of the matter, does not affect the position of the parties or the conciliation officer save in one respect. The bargaining rights which the Council previously held on behalf of the United Association now pass to that organization. The respondent and the United Association must now be deemed to be involved in

the conciliation process as single entities, and the conciliation officer is still seized of the matter so far as these two parties are concerned. The only change is that the United Association will now be bargaining on its own behalf rather than through the Council.

This bargaining will no doubt encompass all the plumbers, steamfitters etc. formerly covered by the agreement with the Council and not just those affected by the present application. These views, in our opinion, are consistent with the spirit and intent of The Labour Relations Act and in particular with those sections previously referred to.

In the result the application is dismissed."

LOCKOUT UNLAWFUL INDEXED ENDORSEMENT

6746-63-U: United Electrical, Radio and Machine Workers of America (Applicant) v. Amalgamated Electric Corporation Limited (Respondent). (DISMISSED OCTOBER 1963).

The Board endorsed the Record as follows:

"Application for declaration that the respondent company called or authorized an unlawful lock-out. By consent, no witnesses were called by either of the parties at the hearing, but counsel for the parties agreed on a statement of the facts of the case. The essential features of this statement are set out below and these facts constitute the evidence on which we are to reach our decision. The application form in this case does contain certain other allegations but, since they were not included in the agreed statement of facts and no oral testimony with respect to them was adduced before us, they cannot be treated as evidence in this case.

The parties entered into a collective agreement which is to remain in effect until November 21, 1963. On April 17, 1963, management informed the employees that the company was moving its plant to Markham. On May 8, management met with a committee of the applicant union and informed the committee that the company would not recognize the union as the bargaining agent for the employees at the new plant. Subsequently, the company notified the employees that it would discontinue its operations at the Toronto plant on August 30 and that vacation schedules would be rearranged. In effect, the employment of 188 of the 263 employees in the bargaining unit was terminated either on August 30 or shortly before that date. The remaining 75 employees were scheduled to be transferred to the Markham plant. "Seniority" accumulated under the collective agreement referred to above was not observed in the discharge of the 188 employees. The company intends to hire some 75 new employees ("local people") at the Markham plant who would be employed by the company for the first time, and it had advertised for applicants for the jobs available. The intention of the company was that the total work force at Markham would be approximately 150 persons.

Counsel for the applicant contends that the term "lock-out" "not only has the meaning expressly provided for" in clause g of subsection 1 of section 1 of The Labour Relations Act, but it also has the meaning that it has acquired in common acceptation. In support of this contention, he refers to the decision of this Board in the Joyce & Smith Plating Company Case, (1956) C.C.H. Canadian Labour Law Reports, Transfer Binder 1955-59, Par. 16,049, C.L.S. 76-523. In that case, as counsel pointed out, the Board did say that the term lock-out was to be given an expansive meaning and that it comprehended not only the situation expressly provided for by the "definition" but also the meaning which the term had acquired in common

acceptation. However, the statement must be read in its proper context; the clause must be construed as a whole. In addition, the language of the clause should be compared with the definition of the term "strike" in clause i of subsection 1 of section 1 of the Act. Looking at this clause from this point of view, it is our opinion that it is not sufficient to show merely that there has been a closing of a place of employment or a refusal by an employer to continue to employ a number of his employees without more. It must be established in addition that the employer acted "with a view to compel or induce his employees" to refrain from exercising certain rights or privileges under the Act. The words "compel or induce" imply that the purpose (see Lyons v. Wilkins, (1899) 1 Ch. 255, per Chitty L.J., at p.270) of the action of the employer is to impel the employees to change their minds about doing something that they are entitled to do under the Act. This approach to the interpretation of the clause is reinforced by the language of the rest of the clause which speaks of compelling or inducing employees to agree to provisions relating to conditions of employment and so on.

The submission of the applicant is that the action of the employer here was taken with a view to compel or induce his employees to refrain from exercising their rights under the collective agreement and especially their seniority rights. Counsel addressed to us a lengthy argument to the effect that, in the circumstances of this case, the collective agreement applied to the employees of the respondent company not only at the Toronto plants but at the Markham plant as well. For present purposes, but without expressing any opinion on the point, let us assume that this argument is sound and that the employees were discharged contrary to the seniority provisions of the collective agreement. The fact remains, however, that there is no evidence before us that the employer is seeking to impel any of the employees

discharged or any of his employees to change their minds in any way about doing what they are entitled to do under the Act. It may be that the action of the employer here has prevented or will prevent the employees from realizing their expectation of continued employment under the agreement, but that is something different from what is contemplated in the definition of the term lock-out in clause g of subsection 1 of section 1 of the Act.

The applicant union or the employees may have other remedies against the respondent either under the Act or at common law (see, for example, Re Grottoli v. Lock & Son Ltd., (1963) 2 O.R. 254), but that is something we are not called upon to determine in these proceedings. Nor are we called upon to deal with or express any opinion on the social morality of the employer's actions, a matter upon which counsel for the applicant union placed great stress in the course of argument. The remedy that the applicant union seeks in this case is a declaration that the employer called or authorized an unlawful lock-out and that is the only issue with which we are entitled to deal in these proceedings.

The application is dismissed.

SECTION 65 INDEXED ENDORSEMENT

6894-63-U: Delta Steel Fabricating Co. Ltd. (Complainant)
v. A. Desbiens, representative United Steelworkers of
America (Respondent).

The Board endorsed the Record as follows:

"The ground for the complaint in this case is that a representative of a trade union attempted, during working hours and on the premises of the employer, to persuade employees of the complainant to continue to be members of the union and that this conduct was contrary to section 53 of The Labour Relations Act. As the Board pointed out in the National Sea Products Limited Case, (1961) O.L.R.B. Monthly Report, May, 1961, p.62:

In our opinion, section 65 is a procedural and remedial section. It does not in itself establish a substantive right. The Board's jurisdiction to grant relief under section 65 is limited to cases in which the aggrieved person has been refused employment, discharged, discriminated against, threatened, coerced, intimidated or otherwise dealt with contrary to some specific provision of The Labour Relations Act.

Section 52 of the Act does not prohibit anyone from attempting to persuade employees at their places of work during their working hours to continue to be members of a trade union. Its purpose is to afford to an employer in certain circumstances an answer to the charge that, by taking disciplinary action against a person who has engaged in the conduct spelled out in the section, he has ipso facto contravened the unfair practice sections of the Act, particularly sections 48 and 50.

Since the complaint on its face does not disclose any infringement or contravention of any provisions of the Act, this complaint is dismissed. The attention of the complainant is directed to section 45 of the Board's Rules of Procedure."

PART 2

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TABLE I

APPLICATIONS & COMPLAINTS TO THE ONTARIO LABOUR RELATIONS BOARD

	Number of applications filed Oct. 1st 7 months of fiscal year		
	1963	63-64	62-63
I Certification	63	441	453
II Declaration Terminating Bargaining Rights	9	52	43
III Declaration of Successor Status	2	20	10
IV Conciliation Services	59	672	773
V Declaration that Strike Unlawful	2	27	26
VI Declaration that Lockout Unlawful	1	3	7
VII Consent to Prosecute	1	97	66
VIII Complaint of Unfair Practice in Employment (Section 65)	11	91	76
IX Miscellaneous	<u>6</u>	<u>12</u>	<u>17</u>
TOTAL	<u><u>154</u></u>	<u><u>1415</u></u>	<u><u>1471</u></u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	Number Oct. 1st 7 months of fiscal year		
	1963	63-64	62-63
Hearings & Continuation of Hearings by the Board	102	641	559

TABLE III

APPLICATIONS & COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR
RELATIONS BOARD BY MAJOR TYPES

	Number of applications disposed of Oct. 1st 7 months of fiscal year		
	1963	63-64	62-63
I Certification	68	472	481
II Declaration Terminating Bargaining Rights	8	68	48
III Declaration of Successor Status	-	5	1
IV Conciliation Services	64	695	731
V Declaration that Strike Unlawful	2	26	26
VI Declaration that Lockout Unlawful	1	2	8
VII Consent to Prosecute	15	104	51
VIII Complaint of Unfair Practice in Employment (Section 65)	20	94	77
IX Miscellaneous	1	4	8
TOTAL	<u>179</u>	<u>1470</u>	<u>1431</u>

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY TYPES AND BY DISPOSITION

*Employees

Disposition	Oct. 1st 7 mos. fiscal yr.			Oct. 1st 7 mos. fiscal yr.		
	'63	63-64	62-63	'63	63-64	62-63

I Certification

Granted	53	340	323	1414	9489	23201
Dismissed	9	81	113	423	2876	7570
Withdrawn	6	52	45	82	703	1528
TOTAL	68	473	481	1919	13068	32299

II Termination of Bargaining Rights

Terminated	7	45	30	72	1200	284
Dismissed	1	21	11	5	495	509
Withdrawn	—	2	7	—	85	64
TOTAL	8	68	48	77	1780	857

* These figures refer to the number of employees directly affected and are based on the number of employees in the bargaining units at the time the applications for certification were filed with the Board. Totals for applications dismissed and withdrawn are approximate.

APPLICATIONS DISPOSED OF BY
BOARD (continued)

	Number of appl'n's disposed of Oct. 1st 7 mos. fiscal year		
	'63	63-64	62-63

III Conciliation Services*

Referred	61	652	647
Dismissed	1	12	14
Withdrawn	<u>2</u>	<u>31</u>	<u>70</u>
 TOTAL	 <u>64</u>	 <u>625</u>	 <u>731</u>

IV Declaration that
Strike Unlawful

Granted	2	5	6
Dismissed	-	3	7
Withdrawn	<u>-</u>	<u>18</u>	<u>13</u>
 TOTAL	 <u>2</u>	 <u>26</u>	 <u>26</u>

V Declaration that
Lockout Unlawful

Granted	-	-	1
Dismissed	1	1	4
Withdrawn	<u>-</u>	<u>1</u>	<u>2</u>
 TOTAL	 <u>1</u>	 <u>2</u>	 <u>?</u>

VI Consent to
Prosecute

Granted	11	31	11
Dismissed	2	9	6
Withdrawn	<u>2</u>	<u>64</u>	<u>34</u>
 TOTAL	 <u>15</u>	 <u>104</u>	 <u>51</u>

*Includes applications for conciliation services re unions
claiming successor status.

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY THE BOARD

	Number of Votes		
	Oct. 1st 7 months of fiscal year.		
	63	63-64	62-63

* Certification After Vote

pre-hearing vote	4	16	26
post-hearing vote	9	38	16
ballots not counted	-	-	2

Dismissed After Vote

pre-hearing vote	-	8	13
post-hearing vote	5	36	37
ballots not counted	-	1	1
TOTAL	<u>18</u>	<u>99</u>	<u>95</u>

* Includes applicant - intervener applications in which both applicant and intervener apply for a new unit and either applicant or intervener is certified.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY THE BOARD

	Number		
	Oct. 1st 7 months of fiscal year		
	63	63-64	62-63
* Respondent Union Successful	-	5	5
Respondent Union Unsuccessful	<u>2</u>	<u>22</u>	<u>12</u>
TOTAL	<u>2</u>	<u>27</u>	<u>17</u>

* In termination proceedings where a vote is taken, the applicant is a group of employees, or the employer; the incumbent union is thus the respondent.

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ONTARIO LABOUR RELATIONS BOARD

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD DURING NOVEMBER 1963

Bargaining Agents Certified During November
No Vote Conducted

6905-63-R: United Steelworkers of America (Applicant) v. Jiger Corporation Limited (Respondent).

Unit: "all employees of the respondent in the Township of Etobicoke, save and except foremen, persons above the rank of foreman and office staff." (15 employees in the unit).

The Board endorsed the Record in part as follows:

"Having regard to the evidence contained in the report of the examiner dated the 15th day of October, 1963, the supplementary report of the examiner dated the 28th day of October, 1963 and the representations made with respect to the examiner's reports at the hearing in this matter on November 12th, 1963, we find that Hans Schade and Martin Van Haalen exercise managerial functions within the meaning of section 1 (3) (b) of the Labour Relations Act and are not included in the bargaining unit."

Board Member H.F. Irwin dissented and said:

"I dissent. On the basis of all the evidence I would have found that Hans Schade and Martin Van Haalen are employees of the respondent included in the bargaining unit and I would accordingly have directed that a representation vote be taken in this matter."

6921-63-R: International Union of Operating Engineers Local 869 (Applicant) v. St. Francis General Hospital (Respondent).

Unit: "all stationary engineers and persons primarily engaged as their helpers employed by the respondent in the boiler room of its hospital at Smiths Falls, save and except the chief engineer." (4 employees in the unit).

6950-63-R: Local Union 633 Amalgamated Meat Cutters & Butcher Workmen of North America (Applicant) v. Ken Clark & Son Ltd. (Respondent).

Unit: "all meat department employees of the respondent at Chatham." (3 employees in the unit).

The Board endorsed the Record in part as follows:

"For the purpose of clarity, the Board declares that William Lauwers is an employee of the respondent and is included in the bargaining unit."

Board Member M.C. Hay dissented and said:

"I dissent. On the basis of the Examiner's report I would find that William Lauwers does exercise managerial functions within the meaning of section 1 subsection (3) (b) of The Labour Relations Act and should not be included in the bargaining unit."

6951-63-R: Food Handlers Local Union 175 Amalgamated Meat Cutters & Butcher Workmen of North America AFL/CIO (Applicant) v. Ken Clark & Son Ltd. (Respondent).

Unit: "all employees of the respondent at Chatham, save and except the meat department employees, store manager, persons above the rank of store manager, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (23 employees in the unit).

(AGREEMENT OF THE PARTIES).

7081-63-R: Fur Workers' Union, Local 82, affiliated with the Amalgamated Meat Cutters & Butcher Workmen of North America (Applicant) v. Barrie's Limited (Respondent).

Unit: "all employees of the respondent in its fur department at Peterborough, save and except foremen, persons above the rank of foreman, designers and office and sales staff." (5 employees in the unit).

The Board endorsed the Record in part as follows:

"For the purposes of clarity, the Board declares that the bargaining unit does not include drivers, engineers, elevator operators or persons engaged in the manufacture of ladies dresses and cloth garments."

7082-63-R: Amalgamated Lithographers of America, Local 12 (Applicant) v. Atwell Fleming Printing Company Limited (Respondent).

Unit: "all cameramen, strippers, platemakers, pressmen, feeders and helpers employed by the respondent in its lithographic department in Toronto, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

7096-63-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Dominion Stores Limited (Respondent).

Unit: "all employees of the respondent at its retail stores at Huntsville, save and except store managers, persons above the rank of store manager, office staff, persons regularly employed for not more than 24 hours per week, and students hired for the school vacation period." (22 employees in the unit).

7101-63-R: Sheet Metal Workers' International Association, Local Union 47 (Applicant) v. W. E. Baxter Ltd. (Respondent).

Unit: "all employees of the respondent employed at its plant in the Township of March, save and except foremen, persons above the rank of foreman, office and sales staff." (16 employees in the unit).

7106-63-R: Local #28, International Bro. of Bookbinders (Applicant) v. W.J. Gage Limited (Respondent).

Unit: "all employees of the respondent at Scarborough, save and except foremen, persons above the rank of foreman, office staff and persons covered by a subsisting collective agreement between Toronto Printing Pressmen's Union Local 10 and the respondent and persons covered by subsisting collective agreements between the applicant and respondent." (10 employees in the unit).

7111-63-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Comco Electro Plating Ltd. (Respondent).

Unit: "all employees of the respondent in the town of Uxbridge, save and except foremen, persons above the rank of foreman, office and sales staff." (51 employees in the unit).

7112-63-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Comco Stamping Limited (Respondent).

Unit: "all employees of the respondent in the town of Uxbridge, save and except foremen, persons above the rank of foreman, office and sales staff." (88 employees in the unit).

7121-63-R: Canadian Union of Public Employees (Applicant) v. Scarborough Public Library Board (Respondent).

Unit: "all janitorial employees of the respondent in Scarborough, save and except foremen and persons above the rank of foreman." (5 employees in the unit).

(AGREEMENT OF THE PARTIES).

7130-63-R: United Steelworkers of America (Applicant) v. Sterling Faucet Canada Limited (Respondent).

Unit: "all employees of the respondent at Oakville, save and except foremen, persons above the rank of foreman and office staff." (16 employees in the unit).

7131-63-R: United Steelworkers of America (Applicant) v. Reliance Tool & Die Casting Ltd. (Respondent).

Unit: "all employees of the respondent at St. Thomas, save and except foremen, persons above the rank of foreman and office staff." (15 employees in the unit).

7133-63-R: Operative Plasterers' and Cement Masons' International Association of the United States and Canada Local Union No. 124, Ottawa - Hull (Applicant) v. Eastern Construction Co. Ltd. (Respondent).

Unit: "all cement masons and their apprentices in the employ of the respondent working at or out of Ottawa, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

7146-63-R: International Union of Operating Engineers, Local 793 (Applicant) v. Tetreault Construction Limited (Respondent).

Unit: "all employees of the respondent working at or out of North Bay engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

7148-63-R: International Union of Operating Engineers, Local 793 (Applicant) v. GAP Construction Company Limited (Respondent).

Unit: "all employees of the respondent working at or out of North Bay engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

7151-63-R: International Union of Operating Engineers, Local 793 (Applicant) v. Nipissing Construction Company Limited (Respondent).

Unit: "all employees of the respondent working at or out of North Bay engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

7155-63-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Armstrong Creamery Ltd. (Respondent).

Unit: "all employees of the respondent employed at or working out of Orangeville, save and except foremen, persons above the rank of foreman, office staff, retail store staff and persons regularly employed for not more than 24 hours per week." (13 employees in the unit).

7161-63-R: United Steelworkers of America (Applicant) v. C & R Metals Limited (Respondent).

Unit: "all employees of the respondent at its Sudbury plant, save and except foremen, those above the rank of foreman, office staff, sales staff, persons employed for not more than 24 hours per week and students employed during the school vacation period." (39 employees in the unit).

7162-63-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Sani-Seal Dairies, Limited (Respondent).

Unit: "all office employees of the respondent at Hamilton, save and except manager and persons above the rank of manager." (3 employees in the unit).

7166-63-R: Lumber and Sawmill Workers Union, Local 2693 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. G.M. McLeod Construction Ltd. (Respondent) v. United Brotherhood of Carpenters & Joiners of America Local Union 1669 (Intervener).

Unit: "all employees of the respondent in the district of Rainy River, save and except foremen, persons above the rank of foreman, office staff and persons covered by a subsisting collective agreement between the respondent and the intervener, United Brotherhood of Carpenters & Joiners of America Local Union 1669." (7 employees in the unit).

7194-63-R: Printing Specialties & Paper Products Union Local 466 (Applicant) v. Dominion Milton Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (34 employees in the unit).

The Board endorsed the Record in part as follows:

"The International Brotherhood of Bookbinders, Local 186, was certified as bargaining agent for certain employees of the respondent on December 6th, 1956. No collective agreement has been entered into between the respondent and the International Brotherhood of Bookbinders, Local 186 since July 1958 and there has been no attempt to negotiate a collective agreement within the past five years. The International Brotherhood of Bookbinders, Local 186 was served with notice of this application, however they failed to intervene and were not represented at the hearing in this matter. The Board was advised by the respondent that a business agent

of the International Brotherhood of Bookbinders, Local 186 informed the respondent that it no longer claimed to represent the employees of the respondent. In view of all these circumstances, the Board finds that the International Brotherhood of Bookbinders, Local 186 has abandoned its bargaining rights and the Board declares that the International Brotherhood of Bookbinders, Local 186 no longer represents the employees of Dominion Milton Limited at Metropolitan Toronto for whom it has heretofor been the bargaining agent."

7195-63-R: International Union of Electrical, Radio & Machine Workers affiliated with AFL-CIO-CLC (Applicant) v. Premier Automotive Units Limited (Respondent).

Unit: "all employees of the respondent at Hamilton, save and except foremen, persons above the rank of foreman, office and sales staff." (151 employees in the unit).

7197-63-R: International Hod Carriers Building and Common Labourers Union of America, Local #506 (Applicant) v. McNamara Construction of Manitoba Limited (Respondent) v. International Union of Operating Engineers, Local 793 (Intervener) v. International Association of Bridge, Structural & Ornamental Ironworkers Local 721 (Intervener).

Unit: "all employees of the respondent's prestressing division employed at Booth and Lakeshore Road in Toronto, save and except foremen and persons above the rank of foreman, office and sales staff." (11 employees in the unit).

7204-63-R: Retail, Wholesale and Department Store Union, AFL-CIO:CLC (Applicant) v. Laurentian View Dairy (Respondent).

Unit: "all employees of the respondent at Deep River, save and except office staff, milk bar employees, supervisors and those above the rank of supervisor." (41 employees in the unit).

7205-63-R: International Brotherhood of Pulp Sulphite and Paper Mill Workers and it's Local 707 (Applicant) v. Domtar Packaging Limited, Carton Specialties Division (Respondent).

Unit: "all employees of the respondent at its Logan Avenue plant in Toronto, save and except foremen, persons above the rank of foreman and office and clerical staff." (44 employees in the unit).

7213-63-R: International Hod Carriers' Building and Common Laborers' Union of America, Local 595, Brantford, Ontario (Applicant) v. Potter and Son Plastering Contractor (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Counties of Brant and Norfolk save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

(AGREEMENT OF THE PARTIES).

7215-63-R: The Galt Engineering Trades Union Branch Number One (Applicant) v. Wean-McKay of Canada Limited (Respondent).

Unit: "all employees of the respondent at Galt, save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (51 employees in the unit).

7219-63-R: Boot and Shoe Workers Union, affiliated with the American Federation of Labour and the Congress of Industrial Organizations (Applicant) v. Textral Fibres Limited (Respondent).

Unit: "all employees of the respondent at Almira, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (61 employees in the unit).

7244-63-R: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Bruno Electric Limited (Respondent).

Unit: "all electricians in the employ of the respondent working at or out of Ottawa, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

The Board endorsed the Record in part as follows:

"The applicant seeks a three county unit in this case. In Ottawa cases, the Board's practice has been to grant "at or out of" units. However, this does not

represent the final thinking of the Board. In fact the decision in this application was delayed pending the hearing of another case involving the Ottawa area on November 25th. In this other case, the Board invited eight employers' associations and twenty-five trade unions (international, national and local) to attend and make submissions with respect to the area problem. Unfortunately, the hearing did not take place because the parties directly involved signed a collective agreement and the application was withdrawn. In the absence of representations from all interested parties the Board is not prepared to depart from its current practice at this time."

7295-63-R: International Union of Operating Engineers, Local 793 (Applicant) v. Gateway Gravel Limited (Respondent).

Unit: "all employees of the respondent working at or out of North Bay engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

Certified Subsequent to Post-Hearing Vote

5198-62-R: International Union United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) AFL-CIO (Applicant) v. Wolverine Tube, Division of Calumet & Hecla of Canada Ltd. (Respondent).

Unit: "all employees of the respondent at its Wolverine Tube Division at London, save and except foremen, those above the rank of foreman, office, sales and laboratory staff." (178 employees in the unit).

The Board endorsed the Record as follows:

"For the reasons given in writing a certificate will issue to the applicant."

Board Member R.W. Teagle dissented and said:

"I dissent. For my reasons given in writing I would have directed the taking of a new representation vote."

Number of names on revised eligibility list	172
Number of ballots cast	172
Number of ballots spoiled	1
Number of ballots marked in favour of applicant	78
Number of ballots marked as opposed to applicant	93

5690-63-R: International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers Local 419, Warehousemen and Miscellaneous Drivers (Applicant) v. United Farms owned and operated by Fairway Produce Co. Ltd. (Respondent).

Unit: "all employees of the respondent at its plant at Bradford, save and except supervisors, persons above the rank of supervisor, and office staff." (49 employees in the unit).

The Board endorsed the Record in part as follows:

"The respondent owns and operates an enterprise which in every relevant respect is the same as that carried on by Federal Farms Limited. For the reasons given in the Federal Farms Limited Case (Board File No. 5657-62-R) the Board finds that the employees of the respondent employed in its plant operations are not 'persons employed in agriculture' within the meaning of section 2 (b) of The Labour Relations Act."

Number of names on revised eligibility list	51
Number of ballots cast	51
Number of ballots marked in favour of applicant	27
Number of ballots marked as opposed to applicant	24

6360-63-R: Toronto Printing Pressmen & Assistants' Union No. 10 (Applicant) v. Telfer Paper Box Company Limited (Respondent) v. The Printing Specialties and Paper Products Union Local 466 (Intervener).

Unit: "all pressmen, assistant pressmen and their apprentices employed in the printing department of the respondent's plant at Scarborough, save and except non-working foremen and those above the rank of non-working foreman." (18 employees in the unit).

Number of names on revised eligibility list	16
Number of ballots cast	16
Number of ballots spoiled	1
Number of ballots marked in favour of applicant	15
Number of ballots marked in favour of intervener	0

6560-63-R: United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC (Applicant) v. Garlock of Canada Ltd. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, foreladies, persons above the rank of foreman or forelady, office staff and sales staff." (45 employees in the unit).

On September 6, 1963 the Board endorsed the Record in part as follows:

"A representation vote will be taken when, in the opinion of the Board, a substantially representative group of employees is employed in the bargaining unit. At that time the necessary directions for the taking of the vote will be given and the matter referred to the Registrar."

On September 30, 1963 the Board further endorsed the Record as follows:

"By a letter from its solicitors dated September 11th, 1963, the applicant requested the Board to reconsider its decision of September 6th, 1963, in which it directed the taking of a representation vote when, in the opinion of the Board, a substantially representative group of employees is employed in the bargaining unit and to issue a certificate to the applicant on the basis of the evidence which was before the Board at the hearing in this matter on August 6th, 1963. In support of its request the applicant has made the following representations:

- (1) that, at the hearing, the representative of the respondent "advised the Board that, starting about the middle of August, there would be 65 or more people employed" and that the impression was given to the applicant and to the Board that "the Respondent would employ a large and representative work force at or shortly after the middle of August";
- (2) that, as of the date of the applicant's request, "only a further 10 persons have been employed, 6 of whom have been made foremen" so that "the net addition to the bargaining unit, therefore, is 4, making a total of 27 as against the 23 persons whose names were on the list at the time of the hearing"; and
- (3) that "the build-up of the work force is proceeding at a pace far slower than that indicated to the Board at the time of the hearing".

With respect to the representations of the applicant, the representative of the respondent, by letter dated September 18th, 1963, states in part as follows:-

- (1) "At that time it was stated that the Company would start moving equipment from its plant at Kincardine on or about August 16th. This was done and the equipment is now at their Toronto plant."
- (2) "It was said on behalf of the company that operations would be removed from Kincardine about August 16th and personnel would be required to operate the machines. At no time was it stated that 65 people would be hired on August 16th."

- (3) "As of Monday, September 16th, the Company hired 13 of those applying to operate the machines available for production. It is their intention to continue hiring as machines become available"; and
- (4) "As regards the 10 persons hired, they were brought in from the Kincardine plant to assist in the setting up of the machines, and in training the employees to be hired".

Upon review of the representations made to the Board at the hearing on August 6th, 1963, and upon consideration of the representations contained in the above-mentioned letters, the Board

- (a) finds that all the material circumstances under which it made its decision of September 6th, 1963, were accurately before the Board at the time its decision was made;
- (b) declares, for the purposes of clarity, that the representations made on behalf of the respondent at the hearing did not, in so far as the Board is concerned, create the "impression" referred to by the representative of the applicant in his letter of September 11th, 1963; and
- (c) does not find, as the applicant submits, "that the build-up of the work force is proceeding at a pace far slower than that indicated to the Board at the time of the hearing."

Accordingly, the Board is not prepared to vary or revoke its decision of September 6th, 1963, in this matter."

On October 17, 1963 the Board further endorsed the Record in part as follows:

"The Board directs that the representation vote to which reference is made in its decision of September 6th, 1963, be taken as soon as the necessary arrangements therefor can be made."

Number of names on revised eligibility list	40
Number of ballots cast	40
Number of ballots marked in favour of applicant	34
Number of ballots marked as opposed to applicant	6

6654-63-R: Toronto Typographical Union, No. 91, I.T.U.
(Applicant) v. The Telfer Paper Box Company Limited
(Respondent) v. The Printing Specialties and Paper Products
Union Local 466 (Intervener).

Unit: "all employees of the respondent at Scarborough
engaged in composing room work, save and except non-working
foremen and persons above the rank of non-working foreman."
(3 employees in the unit).

On October 30, 1963 the Board endorsed the Record in part as
follows:

"The issues raised in this application
are in every relevant respect the same as
those raised in The Telfer Paper Box Company
Limited Case (Board File No. 6360-63-R).
For the reasons given in the latter case,
the Board further finds that all employees
of the respondent at Scarborough engaged in
composing room work, save and except non-
working foremen and persons above the rank
of non-working foreman, constitute a unit
of employees of the respondent appropriate
for collective bargaining."

Board Member R.W. Teagle, while not dissenting, said:

"While I concur in the end result,
I do so for the reasons given by Board
Member H. F. Irwin in The Telfer Paper
Box Company Limited Case (Board File No.
6360-63-R)."

Number of names on eligibility list	3
Number of ballots cast	3
Number of ballots marked in favour of applicant	3
Number of ballots marked in favour of intervener	0

6867-63-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Kennametal Tools & Manufacturing Co. Limited (Respondent).

Unit: "all employees of the respondent at Hamilton, save and except foremen, persons above the rank of foreman, office and sales staff." (23 employees in the unit).

On October 9, 1963 the Board endorsed the Record in part as follows:

"In support of its application for certification, the applicant submitted as evidence of membership twenty membership applications together with twenty corresponding receipts. The respondent filed specimen signatures for a list of twenty-three employees who it states were in the bargaining unit sought by the applicant on the date of the making of the application. A comparison of the union's evidence of membership with the respondent's list reveals that the twenty membership applications are for persons in the bargaining unit on the date of the making of the application. The membership applications bear the signatures of the persons applying for membership. The receipts which indicate the payment of one dollar in each case bear the signature of the collector and ostensibly are countersigned by the new members. Since the signatures on the receipt appearing above the words 'new member's signature' did not correspond with the specimen signatures filed by the respondent, the Board at the hearing of this application on September 25th, 1963 inquired into the discrepancy.

The Board was informed by the representative of the applicant that the names appearing above the words 'new member's signature' were in fact signed by the collectors. Having regard to the fact that none of the receipts submitted by the applicant indicating the payment of one dollar are countersigned and the non-disclosure of the applicant with respect to countersignatures, the Board finds that the evidence of membership is sufficiently weakened so as to disentitle the applicant to certification without a representation vote."

Number of names on eligibility list	23
Number of ballots cast	23
Number of ballots marked in favour of applicant	20
Number of ballots marked as opposed to applicant	3

CERTIFICATION DISMISSED - NO VOTE CONDUCTED.

6100-63-R: National Union of Public Employees, Local 740 (Applicant) v. Valley Transportation Company Limited (Respondent). (19 employees).

(SEE INDEXED ENDORSEMENT PAGE 448)

6453-63-R: General Truck Drivers, Local 879, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers (Applicant) v. Norfish Limited (Respondent) v. Canadian Poultry Workers Union (Intervener). (24 employees).

On November 26, 1963 the Board endorsed the Record as follows:

"Subsequent to the Board's decision of the 16th day of July, 1963, the parties agreed upon a statement of facts with respect to the duties and responsibilities of the drivers, helpers and mechanics affected by this application. Accordingly, and on consent of the parties, the Examiner has not filed a report in this matter.

The applicant is seeking to carve out a bargaining unit of truck drivers and mechanics from an "all employee" unit for which the intervener has been the bargaining agent since 1958 and submits that the bargaining unit proposed by it has been determined by the Board in other cases to be a unit of employees that is appropriate for collective bargaining. The intervener and respondent state that, while the unit proposed by the applicant may constitute an appropriate bargaining unit in some circumstances, it is not an appropriate bargaining unit on the facts in this case. In this respect, the intervener and the respondent rely primarily on the fact that the drivers employed by the respondent also work in the plant and, during such time, are engaged in the normal duties of the plant employees.

The respondent employs drivers in the following classifications: live bird pick-up drivers; delivery drivers; and feed-mill drivers. The live bird pick-up drivers work in the plant for approximately 15 per cent of their time and the delivery drivers for 20 per cent. In each case they are "performing duties in the plant which are normally those of a plant worker". The feed-mill drivers work for 25 to 30 per cent of their time "doing the normal work of a mill employee in the mill".

Having regard to the time during which the drivers are employed as plant employees, we find that the bargaining unit proposed by the applicant is not a unit of employees that is appropriate for collective bargaining.

The application is dismissed."

Board Member D.B. Archer dissented and said:

"I dissent. It is my opinion that a group of "drivers and mechanics" standing alone is an appropriate collective bargaining unit. The Labour Relations Board, since its very inception, on many occasions has used the yardstick of "functional coherence" and "interdependence" to certify an "outside" unit. In bakeries and dairies the "inside" employees are in one unit while the "outside" employees (drivers, etc.) are in another.

Therefore I would have allowed the applicant's petition for certification in this case for "drivers and mechanics".

6868-63-R: Buckley Cartage Employees' Association (Applicant) v. Buckley Cartage Limited (Toronto) (Respondent). (39 employees).

The Board endorsed the Record as follows:

"The constitution of the applicant organization indicates that not all employees who would be included in any bargaining unit found by the Board to be

appropriate for collective bargaining would be eligible for membership. This was also confirmed by Mr. Brohm in his testimony when he stated that no employee was eligible for membership who had not "been continuously in the service of the Company for three months". At the time of the hearing there was at least one person who came within this category. It is clear that this case comes within the principles enunciated in The Gaymer & Oultram Case, C.C.H. Canadian Labour Law Reporter, 1949-54, Transfer Binder ¶17,073, and The Ottawa Citizen Case, ibid ¶17,076. Since the application must fail on these grounds, it is unnecessary for us to express any opinion as to whether or not, in view of the difficulties adverted to at the hearing, the applicant otherwise qualifies as a trade union within the meaning of The Labour Relations Act.

The application is therefore dismissed."

6943-63-R: International Hod Carriers', Building and Common Labourers' Union of America, Local 527 (A.F.L.*C.I.O.)(C.L.C.) (Applicant) v. M.J. Lafourne Construction Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent working at or out of Ottawa, save and except non-working foremen and persons above the rank of non-working foreman." (21 employees in the unit).

On October 23, 1963 the Board endorsed the Record in part as follows.

"Having regard to the evidence adduced by the respondent and in particular to the unchallenged evidence of Cayer we are of the opinion that this is a case where the Board ought to seek the confirmatory evidence of a representation vote. In so finding we wish to make it clear that we are not in agreement with the respondent's submissions on section 53 of The Labour Relations Act."

Board Member G.R. Harvey said:

"In all the circumstances of this case including the conduct of the witness Cayer at the hearing, I am not satisfied with the evidence and I would accordingly have certified the applicant without directing a representation vote."

On November 4, 1963 the Board further endorsed the Record as follows:

"The applicant has requested the Board to reconsider its decision of October 23rd and in the alternative to apply section 7(5) of The Labour Relations Act and certify the applicant without a representation vote.

With respect to the request for reconsideration, there is no suggestion by the applicant that it has any new evidence to offer. The applicant was given a full opportunity to call evidence at the hearing but chose not to do so. The applicant had a full opportunity to advance argument on all the issues. In these circumstances, the Board is not prepared to reconsider its decision of October 23 in so far as it relates to its finding with respect to the allegations made by the respondent.

With respect to the request that the Board apply section 7(5) of the Act, the same is true. The applicant does not rely on any new matters. It had every opportunity to make allegations, adduce evidence and argue the matter before the Board at the hearing held in Ottawa. It chose not to do so. In these circumstances, we are of the opinion that on the grounds presently advanced by the applicant it is now too late to seek this relief.

In the result, therefore, the applicant's requests are denied."

Board Member G.R. Harvey said:

"Without deviating from my original dissent, as no new evidence has been produced, I must concur with my colleagues that in accordance with our long-standing practice, there are no grounds for review."

On November 25, 1963 the Board further endorsed the Record as follows:

"Although the applicant has requested leave to withdraw its application herein, the Board, following its usual practice in such cases, dismisses the application.

The attention of the parties is drawn to the Mathias Ouellette Case CCH 916026, C.L.S. 76-485."

2023-63-R: United Brotherhood of Carpenters & Joiners of America Local Union 1487 affiliated with Carpenters District Council of Toronto and Vicinity (Applicant) v. Birmingham Construction Limited General Contractor (Respondent) v. International Union of Operating Engineers, Local 793 (Intervener) v. International Hod Carriers, Building and Common Labourers' Union of America, Local 183 (Intervener) v. International Hod Carriers Building & Common Labourers Union, Local 506 (Intervener). (10 employees).

On October 16, 1963 the Board endorsed the Record as follows:

"The requests of the respondent and interveners #2 and #3 to stay proceedings until a decision has been handed down by the Jurisdictional Disputes Commission on a complaint filed by intervenor #2, raise important policy considerations. The Board, therefore, desires to take time to consider its position".

On November 19, 1963 the Board further endorsed the Record as follows:

"Although the applicant has asked leave to withdraw its application, the Board, in accordance with its usual practice, dismisses the application."

7029-63-R: International Union of Operating Engineers, Local 796 (Applicant) v. Fairview Lodge, Whitby (Respondent). (11 employees).

The Board endorsed the Record as follows:

"The applicant has requested leave to withdraw its application. In accordance with the Board's usual practice, in such circumstances, the application is dismissed."

7062-63-R: International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada Local 669 Kirkland Lake & Timmins, Ontario (Applicant) v. Timmins Theatres Limited (Respondent). (32 employees).

(SEE INDEXED ENDORSEMENT PAGE 458)

7087-63-R: Canadian Union of Public Employees (Applicant) v. Oakville Board of Education (Respondent). (36 employees).

The Board endorsed the Record as follows:

"The Board has considered the applicant's request to withdraw this application. In accordance with the usual practice of the Board in such circumstances the application is dismissed."

7153-63-R: Canadian Brotherhood of Railway, Transport and General Workers (Applicant) v. John Grant Haulage Limited (Respondent) v. International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers Local 938, General Truck Drivers, 95 Trinity Street, TORONTO (Intervener). (29 employees).

The Board endorsed the Record as follows:

"The incumbent, International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers Local 938 General Truck Drivers, appears to be the bargaining agent for all employees of the respondent with certain exceptions not here relevant pursuant to the Board's Certificate dated June 5th, 1962 and no collective agreement has been entered into.

Although the respondent and the incumbent are currently bargaining for a first collective agreement, no application for conciliation services has been made.

The Board is satisfied that pursuant to the provisions of section 5 and section 46 of The Labour Relations Act this application is untimely.

In view of these circumstances and in accordance with the provisions of section 45 of the Board's Rules of Procedure, the Board is of opinion that the applicant has failed to make out a *prima facie* case for the remedy requested and the application is therefore dismissed."

7173-63-R: The Canadian Union of Public Employees (Applicant) v. The Corporation of the United Counties of Northumberland and Durham (Respondent). (9 employees).

The Board endorsed the Record as follows:

"The Board finds that the respondent is a municipality as defined in the Department of Municipal Affairs Act and that it has declared under section 89 of The Labour Relations Act that The Labour Relations Act shall not apply to it in its relations with its employees or any of them. In view of the action of the respondent in making such a declaration, the Board has no jurisdiction to process this application further and the proceeding is accordingly terminated."

7198-63-R: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Bruno Electric Limited (Respondent). (2 employees).

The Board endorsed the Record in part as follows:

"The applicant failed to file with the Board Form 60, Declaration Concerning Membership Documents, Construction Industry, within the time fixed in accordance with The Labour Relations Act and the Board's Rules of Procedure. In accordance with its usual practice the application is therefore dismissed."

APPLICATIONS FOR CERTIFICATION DISMISSED SUBSEQUENT TO
PRE-HEARING VOTE

7050-63-R: General Truck Drivers, Local 879, International Brotherhood of Teamsters Chauffeurs and Helpers (Applicant) v. Essex Packers Ltd. (Respondent).

Voting Constituency:

"all truck drivers and automobile mechanics of the respondent employed at and working out of its Brant and Hillyard Street plant, at Hamilton, save and except foremen, persons above the rank of foreman, office and sales staff and persons regularly employed for not more than twenty-four hours per week." (32 employees in the constituency).

Number of names on revised eligibility list	32
Number of ballots cast	32
Number of ballots spoiled	1
Number of ballots marked in favour of applicant	15
Number of ballots marked as opposed to applicant	16

APPLICATIONS FOR CERTIFICATION DISMISSED SUBSEQUENT TO
POST-HEARING VOTE

6549-63-R: United Steelworkers of America (Applicant) v. Seaway Plate & Structural Steel Limited (Respondent) v. International Association of Bridge, Structural & Ornamental Iron Workers Local 738 (Intervener).

Unit: "all employees of the respondent at Welland, save and except foremen, persons above the rank of foreman, office staff, persons regularly employed for not more than 24 hours per week, students employed for the school vacation period and employees covered by subsisting collective agreements." (23 employees in the unit).

(AGREEMENT OF THE PARTIES)

Number of names on revised eligibility list	28
Number of ballots cast	28
Number of ballots marked in favour of applicant	14
Number of ballots marked as opposed to applicant	14

7007-63-R: International Woodworkers of America (Applicant) v. Larsen & Shaw Limited (Respondent).

Unit: "all employees of the respondent at Walkerton, save and except assistant foremen, persons above the rank of assistant foreman, office and sales staff, and students hired for the school vacation period." (53 employees in the unit).

Number of names on revised eligibility list	53
Number of ballots cast	53
Number of ballots marked in favour of applicant	18
Number of ballots marked as opposed to applicant	35

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING NOVEMBER 1963

7102-63-R: Croven Employees Association (Applicant) v. Croven Limited (Whitby) (Respondent) v. International Union of Electrical Radio & Machine Workers, AFL-CIO-CLC (Intervener). (163 employees).

7104-63-R: Canadian Union of Public Employees (Applicant) v. William Naardin (Respondent). (5 employees).

7114-63-R: Canadian Union of Public Employees (Applicant) v. Sault Ste. Marie Board of Education (Respondent). (25 employees).

7135-63-R: Canadian Union of Public Employees (Applicant) v. St. Catharines Separate School Board (Respondent). (28 employees).

7207-63-R: Sheet Metal Workers' International Association, Local Union 504 (Applicant) v. Irving & Harding Limited (working at and out of Sault Ste. Marie) (Respondent). (4 employees).

The Board endorsed the Record as follows:

"The applicant advised the Board that it had entered into a collective agreement with the respondent covering the employees of the respondent for whom it had applied to be certified as bargaining agent in this matter.

This application is therefore withdrawn on the request of the applicant by leave of the Board."

7212-63-R: International Hod Carriers' Building and Common Labourers' Union of America, Local 527 (Applicant) v. McNamara Construction of Ontario Limited Building Division (Respondent). (2 employees).

7338-63-R: International Hod Carriers Building and Common Labourers Union of America, Local # 493 (Applicant) v. Marsono Construction Company Limited (Respondent). (3 employees).

13457-57: The United Brotherhood of Carpenters and Joiners of America, A.F.L. C.I.O., C.L.C. (Applicant) v. Toten Construction Company Ltd. (Respondent). (13 employees).

APPLICATION TERMINATIONS DISPOSED OF DURING NOVEMBER 1963

6601-63-R: Barbara McConnell (Applicant) v. International Chemical Workers Union (Respondent). (GRANTED). (76 employees).

(Re: Chesebrough-Pond's (Canada) Limited,
Markham, Ontario)

The Board endorsed the Record as follows:

"The applicant on July 18th, 1963 made an application for a declaration terminating the bargaining rights of the respondent. On August 28th, 1963 the Board directed that a representation vote be taken in this matter. On November 5th, 1963, the Board received a telegram from the respondent which reads as follows:

"please be advised that the International Chemical Workers Union no longer claim to represent employees of the Chesebrough-Pond's (Canada) Limited at Markham Ontario."

The Board therefore finds that the respondent has abandoned its bargaining rights and declares that the respondent no longer represents the employees of Chesebrough-Pond's (Canada) Limited at Markham for whom it has heretofore been the bargaining agent."

Number of names on eligibility list	62
Number of ballots cast	62
Number of ballots marked in favour of respondent	29
Number of ballots marked as opposed to respondent	33

6937-63-R: Employee's of Harry Hayley & Sons, Limited
(Applicant) v. International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers of America, Local No.
230 (Respondent). (GRANTED).

(Re: Harry Hayley & Sons Limited,
Ottawa and Eastview)

Number of names on revised eligibility list	33
Number of ballots cast	33
Number of ballots segregated (not counted)	1
Number of ballots marked in favour of respondent	2
Number of ballots marked as opposed to respondent	30

7053-63-R: David Hanley (Applicant) v. Foodhandlers' Local
Union 175, Amalgamated Meat Cutters and Butcher Workmen of
North America AFL-CIO (Respondent) v. Wesley Spurrell
(Intervener). (GRANTED). (4 employees).

(Re: Homedale IGA Foodliner,
St. Thomas, Ontario)

Number of names on revised eligibility list	4
Number of ballots cast	4
Number of ballots marked in favour of respondent	0
Number of ballots marked as opposed to respondent	4

7107-63-R: Faultless Casters Limited (Applicant) v. International
Woodworkers of America (Respondent). (GRANTED).
(6 employees).

(Re: Faultless Casters Limited,
Stratford, Ontario)

(SEE INDEXED ENDORSEMENT PAGE 459)

7125-63-R: Robert J. Schwartz on his own behalf and on the behalf of the employees of Puddicombe Motors (1956) Limited (Applicant) v. Welders Public Garage Employees Motor Mechanics and Allied Workers Union 847 affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondent). (GRANTED). (29 employees).

(Re: Puddicombe Motors (1956) Limited,
Metropolitan Toronto)

The Board endorsed the Record as follows:

"This is an application for a declaration terminating the bargaining rights of the respondent.

The respondent in its letter dated November 7th, 1963 stated that it 'no longer claim to represent any employees of Puddicombe Motors (1956) Limited.'

The Board therefore finds that the respondent has abandoned its bargaining rights and declares that the respondent no longer represents the employees of Puddicombe Motors (1956) Limited at Metropolitan Toronto for whom it has heretofore been the bargaining agent."

7164-63-R: Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 880 (Applicant) v. Rawlings Transport (Chatham) Limited and Pettapiece Cartage Limited (Respondent). (WITHDRAWN).

The Board endorsed the Record as follows:

"On consent of the parties this application is withdrawn by leave of the Board."

SUCCESSOR STATUS APPLICATIONS DISPOSED OF DURING NOVEMBER 1963

6985-63-R: Building Service Employees' International Union, AFL-CIO-CLC (Applicant) v. The Ascot Turf Club, Limited (Respondent) v. Mutual Employees' Association (Predecessor). (GRANTED).

The Board endorsed the Record in part as follows:

"The Board finds that the applicant is, by reason of a merger, the successor of Mutual Employees' Association which was the bargaining agent for a unit of employees of the respondent defined in a collective agreement between The Ascot Turf Club, Limited, and Mutual Employees' Association effective March 14th, 1963 until November 25th, 1964, with a year to year renewal clause subject to notice."

6986-63-R: Building Service Employees' International Union, AFL-CIO-CLC (Applicant) v. The Belleville Driving and Athletic Association Limited (Respondent) v. Mutual Employees' Association (Predecessor). (GRANTED).

The Board endorsed the Record in part as follows:

"The Board finds that the applicant is, by reason of a merger, the successor of Mutual Employees' Association which was the bargaining agent for a unit of employees of the respondent defined in a collective agreement between the Belleville Driving and Athletic Association Limited, and Mutual Employees' Association effective March 14th, 1963 until November 25th, 1964, with a year to year renewal clause subject to notice."

6987-63-R: Building Service Employees' International Union, AFL-CIO-CLC (Applicant) v. The Dufferin Park Driving Club Limited (Respondent) v. Mutual Employees' Association (Predecessor). (GRANTED).

The Board endorsed the Record in part as follows:

"The Board finds that the applicant is, by reason of a merger, the successor of Mutual Employees' Association which was the bargaining agent for a unit of employees of the respondent defined in a collective agreement between The Dufferin Park Driving Club Limited, and Mutual Employees' Association effective March 14th, 1963 until November 25th, 1964, with a year to year renewal clause subject to notice."

6988-63-R: Building Service Employees' International Union, AFL-CIO-CLC (Applicant) v. The Fort Erie Jockey Club Limited (Respondent) v. Mutual Employees' Association (Predecessor). (GRANTED).

The Board endorsed the Record in part as follows:

"The Board finds that the applicant is, by reason of a merger, the successor of Mutual Employees' Association which was the bargaining agent for a unit of employees of the respondent defined in a collective agreement between The Fort Erie Jockey Club Limited, and Mutual Employees' Association effective March 14th, 1963 until November 25th, 1964, with a year to year renewal clause subject to notice."

6989-63-R: Building Service Employees' International Union, AFL-CIO-CLC (Applicant) v. Greenwood Racing Club Limited (Respondent) v. Mutual Employees' Association (Predecessor). (GRANTED).

The Board endorsed the Record in part as follows:

"The Board finds that the applicant is, by reason of a merger, the successor of Mutual Employees' Association which was the bargaining agent for a unit of employees of the respondent defined in a collective agreement between Greenwood Racing Club Limited, and Mutual Employees' Association effective March 14th, 1963 until November 25th, 1964, with a year to year renewal clause subject to notice."

6990-63-R: Building Service Employees' International Union, AFL-CIO-CLC (Applicant) v. The Hamilton Jockey Club (Limited) (Respondent) v. Mutual Employees' Association (Predecessor) (GRANTED).

The Board endorsed the Record in part as follows:

"The Board finds that the applicant is, by reason of a merger, the successor of Mutual Employees' Association which was the bargaining agent for a unit of employees of the respondent defined in a collective agreement between The Hamilton Jockey Club (Limited), and Mutual Employees' Association effective March 14th, 1963 until November 25th, 1964, with a year to year renewal clause subject to notice."

6991-63-R: Building Service Employees' International Union, AFL-CIO-CLC (Applicant) v. The Jockey Club Limited (Respondent). v. Mutual Employees' Association (Predecessor). (GRANTED).

The Board endorsed the Record in part as follows:

"The Board finds that the applicant is, by reason of a merger, the successor of Mutual Employees' Association which was the bargaining agent for a unit of employees of the respondent defined in a collective agreement between The Jockey Club Limited, and Mutual Employees' Association effective March 14th, 1963, until November 25th, 1964, with a year to year renewal clause subject to notice."

6992-63-R: Building Service Employees' International Union, AFL-CIO-CLC (Applicant) v. Kenilworth Jockey Club, Limited (Respondent). v. Mutual Employees' Association (Predecessor). (GRANTED).

The Board endorsed the Record in part as follows:

"The Board finds that the applicant is, by reason of a merger, the successor of Mutual Employees' Association which was the bargaining agent for a unit of employees of the respondent defined in a collective agreement between Kenilworth Jockey Club, Limited, and Mutual Employees' Association effective March 14th, 1963 until November 25th, 1964, with a year to year renewal clause subject to notice."

6993-63-R: Building Service Employees' International Union, AFL-CIO-CLC (Applicant) v. Long Branch Jockey Club, Limited (Respondent) v. Mutual Employees' Association (Predecessor). (GRANTED).

The Board endorsed the Record in part as follows:

"The Board finds that the applicant is, by reason of a merger, the successor of Mutual Employees' Association which was the bargaining agent for a unit of employees of the respondent defined in a collective agreement between Long Branch Jockey Club, Limited, and Mutual Employees' Association effective March 14th, 1963 until November 25th, 1964, with a year to year renewal clause subject to notice."

6994-63-R: Building Service Employees' International Union, AFL-CIO-CLC (Applicant) v. The Metropolitan Racing Association of Canada (Limited) (Respondent) v. Mutual Employees' Association (Predecessor). (GRANTED).

The Board endorsed the Record in part as follows:

"The Board finds that the applicant is, by reason of a merger, the successor of Mutual Employees' Association which was the bargaining agent for a unit of employees of the respondent defined in a collective agreement between The Metropolitan Racing Association of Canada (Limited), and Mutual Employees' Association effective March 14th, 1963 until November 25th, 1964, with a year to year renewal clause subject to notice."

6995-63-R: Building Service Employees' International Union, AFL-CIO-CLC (Applicant) v. Orpendale Limited (Respondent) v. Mutual Employees' Association (Predecessor). (GRANTED).

The Board endorsed the Record in part as follows:

"The Board finds that the applicant is, by reason of a merger, the successor of Mutual Employees' Association which was the bargaining agent for a unit of employees of the respondent defined in a collective agreement between Orpendale Limited, and Mutual Employees' Association effective March 14th, 1963 until November 25th, 1964, with a year to year renewal clause subject to notice."

6996-63-R: Building Service Employees' International Union, AFL-CIO-CLC (Applicant) v. The Peterborough Turf Club Limited (Respondent) v. Mutual Employees' Association (Predecessor). (GRANTED).

The Board endorsed the Record in part as follows:

"The Board finds that the applicant is, by reason of a merger, the successor of Mutual Employees' Association which was the bargaining agent for a unit of employees of the respondent defined in a collective agreement between the Peterborough Turf Club Limited, and Mutual Employees' Association effective March 14th, 1963 until November 25th, 1964, with a year to year renewal clause subject to notice."

6997-63-R: Building Service Employees' International Union, AFL-CIO-CLC (Applicant) v. The Sudbury Riding and Driving Park Association, Limited (Respondent) v. Mutual Employees' Association (Predecessor). (GRANTED).

The Board endorsed the Record in part as follows:

"The Board finds that the applicant is, by reason of a merger, the successor of Mutual Employees' Association which was the bargaining agent for a unit of employees of the respondent defined in a collective agreement between The Sudbury Riding and Driving Park Association, Limited, and Mutual Employees' Association effective March 14th, 1963 until November 25th, 1964, with a year to year renewal clause subject to notice."

6998-63-R: Building Service Employees' International Union, AFL-CIO-CLC (Applicant) v. The Thorncliffe Park Racing and Breeding Association, Limited (Respondent) v. Mutual Employees' Association. (Predecessor). (GRANTED).

The Board endorsed the Record in part as follows:

"The Board finds that the applicant is, by reason of a merger, the successor of Mutual Employees' Association which was the bargaining agent for a unit of employees of the respondent defined in a collective agreement between The Thorncliffe Park Racing and Breeding Association, Limited, and Mutual Employees' Association effective March 14th, 1963 until November 25th, 1964, with a year to year renewal clause subject to notice."

7093-63-R: The International Association of Machinists (Applicant) v. Regent Equipment Manufacturing Company, Division of Marquette Equipment Canada Ltd. (Respondent) v. Local Union #1597 of the Canadian Labour Congress (Predecessor). (GRANTED).

The Board endorsed the Record in part as follows:

"The Board finds that the applicant is, by reason of a transfer of jurisdiction, the successor to Local Union #1597 of the Canadian Labour Congress which was the bargaining agent for a unit of employees of the respondent defined in a collective

agreement between the Regent Equipment Manufacturing Company, Division of Marquette Equipment Canada Limited and Local Union #1597, Canadian Labour Congress dated April 13th, 1962 and effective until April 13th, 1964 with a year to year renewal clause subject to notice."

APPLICATIONS FOR DETERMINATION UNDER SECTION 79 DISPOSED OF
DURING NOVEMBER 1963

6962-63-M: International Leather Goods, Plastics & Novelty Workers' Union, Local No. 8 (Applicant) v. Dominion Luggage Company (Respondent).

The Board endorsed the Record as follows:

"The applicant has requested a determination by the Board as to whether certain named persons in the employ of the respondent company are foremen under the terms of an addendum to a collective agreement that had been entered into between the parties. On the material before us, it would appear that the only question is one of interpretation or the application of the terms of this addendum.

The Board's jurisdiction under section 79(2) of The Labour Relations Act is confined to a question as to whether a person is an employee or a guard. On the material before us, no such question has arisen here.

The application is accordingly dismissed."

APPLICATION UNDER SECTION 34(5) DISPOSED OF DURING
NOVEMBER 1963

7042-63-M: United Brotherhood of Carpenters and Joiners of America, Local Union No. 1946 (Applicant) v. Hans Steffny Carpenter Contractor (Respondent).

(SEE INDEXED ENDORSEMENT PAGE 461)

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF AGREEMENT
DISPOSED OF DURING NOVEMBER 1963

7100-63-M: Swaco Employees' Guild (Applicant) v. Stewart-Warner Corporation of Canada Limited (Respondent).

The Board endorsed the Record as follows:

"The parties having jointly applied for an early termination of the collective agreement between them pursuant to section 39 (3) of The Labour Relations Act; the Board consents to the early termination by the parties of the collective agreement dated the 12th day of December 1962, termination to be effective on the 12th day of November, 1963."

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF
DURING NOVEMBER 1963

7075-63-U: The Hydro-Electric Power Commission of Ontario (Applicant) v. G.T. Harman, et al (Respondents). (GRANTED).

The Board endorsed the Record as follows:

"On the basis of the evidence before it the Board finds that G. T. Harman, L. G. Jolley and G. A. Lachlan were bound by a collective agreement between the applicant and the Ontario Hydro Employees' Union Local 1000 N.U.P.S.E. - C.L.C. which came into effect as of April 1st, 1961 and remains in effect until March 31st, 1964.

The Board further finds that G. T. Harman, L. G. Jolley and G. A. Lachlan did on October 2nd, 1963 engage in a strike within the meaning of section 1 (1) (i) of The Labour Relations Act at the Douglas Point Project of The Hydro-Electric Power Commission of Ontario.

Having regard to the above findings and the principles set forth in the Western Tire and Auto Supply Limited Case (1959 C.C.H. Canadian Labour Law Reports, Transfer Binder '55-'59, ¶16,134, C.L.S. 76-638) we are satisfied that this is a situation where the Board should exercise its discretion

and issue the declaration sought by the applicant. The Board accordingly declares that the strike engaged in by G. T. Harman, L. G. Jolley and G. A. Lachlan on the 2nd day of October, 1963 was contrary to section 54(1) of The Labour Relations Act and was therefore unlawful."

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING
NOVEMBER 1963

6622-63-U: The Hydro-Electric Power Commission of Ontario (Applicant) v. K. J. Mann (Respondent). (GRANTED).

6623-63-U: The Hydro-Electric Power Commission of Ontario (Applicant) v. W. C. McConville (Respondent). (GRANTED).

6624-63-U: The Hydro-Electric Power Commission of Ontario (Applicant) v. R. H. McAnulty (Respondent). (GRANTED).

6625-63-U: The Hydro-Electric Power Commission of Ontario (Applicant) v. A. Mezzanotte (Respondent). (GRANTED).

6626-63-U: The Hydro-Electric Power Commission of Ontario (Applicant) v. H. White (Respondent). (GRANTED).

The Board endorsed each of the above records as follows:

"The Board consents to the institution of a prosecution against the respondent for the following offence alleged to have been committed: that the said respondent did engage in an unlawful strike from July 2nd, 1963 to July 17th, 1963 in contravention of section 54 of The Labour Relations Act.

The appropriate documents will issue."

7172-63-U: The Hydro-Electric Power Commission of Ontario (Applicant) v. John Chartrand et al (Respondents). (GRANTED).

The Board endorsed the Record as follows:

"The Board consents to the institution of a prosecution against the respondents for the following offences alleged to have been committed:

- (a) that the said respondents did engage in an unlawful strike on the 2nd, 3rd, 4th, and 7th days of October, 1963, in contravention of subsection (2) of section 54 of The Labour Relations Act.
- (b) that the said respondents knew or ought to have known that, as a probable and reasonable consequence of their participation in a picket line on the 2nd, and 3rd days of October, 1963, other employees of the applicant would engage in an unlawful strike, in contravention of subsection (1) of section 57 of The Labour Relations Act.

The appropriate documents will issue."

APPLICATIONS UNDER SECTION 65 DISPOSED OF DURING NOVEMBER 1963

1471-61-U: L.A. Rice & Gustav Schickendanz (Complainant) v. Renato Aguzzi (Respondent).

1472-61-U: L.A. Rice & Gustav Schickendanz (Complainants) v. Antonio Iacobelli & Americo Pietrobono (Respondent).

6369-63-U: Retail Clerks International Association (Complainant) v. Sentry Department Stores Limited (Respondent).

(WRITTEN REASONS).

6764-63-U: United Electrical, Radio and Machine Workers of America (UE) (Complainant) v. J.H. Babcock & Son Co. Ltd. (Respondent).

On October 16, 1963 the Board endorsed the Record as follows:

"This is a complaint for relief under section 65 of The Labour Relations Act.

The complainant has filed a complaint making certain allegations with respect to four aggrieved persons, namely Wayne Simpkins, Thomas Akey, Edmond Balesdent and Douglas Blundell. In view of the fact that there is a monetary consideration in the complaint relating to Wayne Simpkins, the Board has decided to make a determination with respect

to him at this time. The Board, however, wishes to give further consideration to the matters raised with regard to Thomas Akey, Edmond Balesdent and Douglas Blundell. Accordingly, The Board is reserving its decision with respect to these persons.

The complainant alleges that Wayne Simpkins was discharged because he was a member of the complainant trade union contrary to the provisions of sections 50 and 52 of The Labour Relations Act. The respondent alleges that Simpkins was laid-off in the course of regular lay-offs due to a slow down in production.

The Board finds that the respondent had knowledge that Wayne Simpkins was a member of the complainant trade union. The Board further finds that on August 19th, 1963, Simpkins was, in fact, discharged and not laid-off by Oscar Babcock, the president of the respondent company. Even if we accept the argument of the respondent that Simpkins was laid-off, we find that in retaining Donald Frink in his employment while dispensing with the services of Simpkins the respondent failed to follow its stated policy of laying-off employees in accordance with their seniority and ability. Having regard to the above findings, the pattern of conduct of Oscar Babcock relating to the union, and all the surrounding circumstances of this case, including the recall of Wayne Baldwin, the Board is satisfied that Wayne Simpkins was discharged in violation of section 50 of The Labour Relations Act.

At the time of his discharge Wayne Simpkins was working a 44-hour week and earning \$1.45 per hour. On the evidence we find that he made prompt and reasonable efforts to mitigate his loss of earnings by registering with the Unemployment Insurance Commission and seeking other

employment. At the time of the hearing on September 26th, Simpkins still had not been successful in obtaining any other employment elsewhere.

Our determination of the action to be taken by the respondent is as follows:-

- (1) The respondent shall forthwith reinstate and employ Wayne Simpkins to the same or like employment, the same wages and employment benefits as he had, and received, prior to and up to the time of his discharge on August 19th, 1963.
- (2) As compensation for his loss of wages and employment benefits from August 19th to and including September 26th, the respondent shall forthwith pay to Wayne Simpkins the sum of \$351.12.
- (3) The respondent and the complainant shall meet forthwith with a view to agreeing on the amount of loss of earnings and employment benefits, if any, now sustained or which may hereafter be sustained by Wayne Simpkins between the date of the hearing on September 26th and the date of his actual re-employment by the respondent. In default of an agreement between the parties within 7 days after the release of this determination or within such further period as the parties may mutually agree upon, the amount of any such further compensation payable, if any, will be determined by the Board upon the motion of either party for a further hearing for that purpose."

On November 27, 1963 the Board further endorsed the Record as follows:

"The Board, in its decision dated October 16th, 1963 made a determination with respect to the aggrieved person Wayne Simpkins, but reserved its decision with respect to the aggrieved persons Thomas Akey, Edmond Balesdent and Douglas Blundell. The Board has now had an opportunity to give further consideration to the evidence relating to Akey, Balesdent and Blundell.

While we do not condone the conduct of Oscar Babcock with respect to the three aggrieved persons, we are of the opinion that the circumstances of the instant case is not one in which the Board should issue a directive to the respondent.

The complaint as it relates to Thomas Akey, Edmond Balesdent and Douglas Blundell, accordingly, is dismissed."

6804-63-U: The Sudbury and District General Workers' Union Local 902 of the International Union of Mine Mill and Smelter Workers (Complainant) v. Ernie's Signs Limited (Respondent).

(WRITTEN REASONS).

6933-63-U: Christian Labour Association of Canada (Complainant) v. G. Smeitink, (carrying on business under the name of "Success" Janitor Service) (Georgetown) (Respondent).

On November 4, 1963 the Board endorsed the Record as follows:

"On the basis of all the evidence before it, the Board is satisfied that Donald Post whose employment with the respondent was terminated on September 13th, 1963, was discharged by the respondent contrary to The Labour Relations Act.

The respondent shall forthwith reinstate Donald Post in his employment in the same position in which he was employed by the respondent at the time of his discharge.

The question as to the amount of compensation, if any, to which Donald Post is entitled for his loss of earnings between the time of his discharge and the date on which he is reinstated in his employment is still under consideration by the Board and the Board intends to issue a further direction with respect to this matter."

On November 27, 1963 the Board further endorsed the Record as follows:

"Pursuant to the Board's decision of November 4th, 1963, there remains for consideration the amount of compensation payable to Donald Post by reason of his discharge by the respondent contrary to The Labour Relations Act.

At the time of his discharge on September 13th, Post was earning approximately \$77.00 per week. Although he registered promptly with the Unemployment Insurance Commission on the Monday following the Friday on which he was discharged, he made little other effort on his own initiative to find employment although it appears from the evidence that other employment was available, at least of an intermittent nature. Taking into account some \$90.00 that he earned by "helping the neighbors" when they called upon him, we assess his compensation for his loss of earnings from the date of his discharge to and including November 4th, 1963, the date on which the Board directed the respondent to reinstate him in his employment, at \$225.00.

The Board accordingly directs that the respondent shall forthwith pay to Donald Post the sum of \$225.00."

7046-63-U: United Steelworkers of America (Complainant) v. Rosco Metal Products Ltd. (Respondent).

7074-63-U: Textile Workers Union of America (Complainant) v. Kenner Products (Canada) Limited (Respondent).

7077-63-U: United Electrical, Radio and Machine Workers of America (UE) (Complainant) v. Delta Electronics Limited (Respondent).

7152-63-U: Mr. Don Sharp (Complainant) v. William Naardin (Respondent).

CERTIFICATION INDEXED ENDORSEMENTS

6100-63-R: National Union of Public Employees, Local 740 (Applicant) v. Valley Transportation Company Limited (Respondent). (DISMISSED NOVEMBER 1963).

The Board endorsed the Record as follows:

"The union's evidence of membership consists of 4 combination applications for membership and receipts. These receipts, which were filed with the union's application for certification on May 13th, 1963, purport to evidence that initiation fees in the sum of \$5.00 were paid by and collected from each of the four applicants for membership on the dates indicated in the receipts by one Alban Lepinski. His signature appears on the receipts as the "authorized agent" of the applicant, Local 740 of the National Union of Public Employees. Lepinski holds the office of secretary-treasurer of this Local.

Two of the receipts in question are dated May 6th and two are dated May 7th. The terminal date of the application was May 21st. Form 9 was filed on May 22nd, and was signed by W. A. Acton, the representative of the applicant. In this latter document Acton states in part, that on the basis of inquiries made by him, the "persons whose names appear on the receipts -- of the payment -- of initiation fees are the persons who actually collected the monies paid on account of initiation fees and that each member on whose behalf a receipt [- of payment is submitted has personally paid in money the amount shown thereon on his own behalf to the person

whose name appears on his receipt of payment as collector - -". The four combination applications and receipts in question were relied on without qualification by the applicant at the hearing held at Toronto on May 27th, 1963, as proof to the Board of the union's membership among the employees in its proposed bargaining unit and of the truth and accuracy of the matters stated in these documents.

After the hearing, and following the Board's appointment of an examiner to inquire into the composition of the bargaining unit, the solicitors for the respondent informed the Board by letter dated June 4th, 1963, that they had been advised by their client that one Daniel Chasse, who was one of the four employees of the respondent for whom the union filed a combination application and receipt, had not in fact paid the sum of \$5.00 as represented by the receipt but only \$2.50. In consequence, the Board conducted its usual investigation through one of its examiners and as a result a hearing was held at Pembroke to inquire into the matter. All parties were given notice of this hearing and full opportunity to adduce evidence and to cross-examine the witnesses was afforded to them.

The testimony heard by the Board at the hearing in Pembroke reveals the following facts:-

- (a) Contrary to what is stated in the receipts and Form 9, no monies whatever in respect of initiation fees were in fact paid to or received by Lepinski until sometime between May 18th and May 27th. Also, the monies for three of the four persons in question were in fact paid to and collected from these persons, not by Lepinski, the person designated in the receipts and Form 9 as the collector, but by another employee, Robert Spencer, who later turned them over to Lepinski.

(b) All cards and receipts were given to and signed by the employees in blank. The relevant information in each of the printed receipts and applications, including the number of the Applicant Local, the date of the receipt and application card, and the amount of the initiation fee in the receipt and application card, was not typed in and completed until some time later by Lepinski.

(c) Contrary to what is stated in the receipts and Form 9, it was not until on or about May 21st that any money whatever was paid for any portion of the initiation fees for Chasse. At this time another employee, one Claude Lecours, and Spencer, without any request to do so from, or the knowledge of Chasse, each advanced the sum of \$1.25 to Lepinski to make up half of the total initiation fee of \$5.00. Later the same day Chasse was informed that Spencer and Lecours had advanced this money and he repaid them. Some time after this, Spencer asked Chasse for the balance of the initiation fee, then being \$2.50, and Chasse indicated that he would bring it to him, but he did not. On or about May 27th, and again without the knowledge or request of Chasse, Spencer advanced the further sum of \$2.50 to Lepinski as the balance of Chasse's initiation fee. When Lepinski received this payment he was made aware of the fact that Spencer was advancing it on behalf of Chasse and that it was not Chasse's money. Chasse did not pay Spencer the amount of this last advance.

(d) It was also admitted by Lepinski in his testimony that contrary to the information contained in the receipt filed for him and Form 9, only \$2.50 was in fact collected from Lecours. Further, it was clear from Lepinski's testimony that again contrary to the receipt filed for this person and Form 9 it was not until in or about May 27th, 1963, that the last half of the initiation fee was paid by a third person, Robert Milan.

None of the facts indicated in (a), (b), (c) or (d) were disclosed to the Board prior to or at the hearing held in Toronto.

In our view, the documents in question which Lepinski caused to be submitted to this Board as proof of their contents contain flagrant misrepresentations of material facts which were intended by Lepinski, a responsible officer of the applicant, to be, and which were in fact, relied upon at their face value by the Board.

It need hardly be pointed out, that it would be impossible for the Board to interview each and every employee in respect of whom evidence of membership is filed in applications for certification. Further, whether a person is or is not a member of a trade union or does or does not desire to be represented by a trade union are, except in the special circumstances where the Board consents to their disclosure, matters which are protected from disclosure by the provisions of section 83 of the Act. By the very nature of things, therefore, the Board must rely heavily and almost entirely on documentary evidence when considering the facts relied on as constituting proof of the union's membership. As the documents submitted as evidence of membership are not subject to any examination by the other parties to

the proceedings, the Board must be most circumspect and meticulous in its examination and acceptance of them. The Board must expect and insist that persons who file applications for membership cards and receipts and Form 9 as evidence of membership, take all necessary precautions and care to ensure that the information contained therein is true and accurate. The Board is entitled to demand the highest standards of integrity, disclosure, and accuracy on the part of those who submit such evidence and were undisclosed inaccuracies of material facts are later brought to its attention, to take a strict view of them. As was said by the Board in the Webster Air Equipment Company Ltd. Case, C.C.H. Canadian Labour Law Reporter, Transfer Binder 1955-59, ¶16,110, at p. 12,204,

Any attempt to mislead the Board or any failure to make full disclosure of all material facts must weigh heavily against an applicant.

Having regard to the serious misrepresentations indicated, and to the extremely unsatisfactory nature of the evidence, it is manifest that the documents tendered as evidence of membership cannot be accepted as either containing reliable information or as meeting even the minimum standards of proof required by the Board.

The application is dismissed."

6360-63-R: Toronto Printing Pressmen & Assistants' Union No. 10 (Applicant) v. Telfer Paper Box Company Limited (Respondent) v. The Printing Specialties and Paper Products Union Local 466 (Intervener). (GRANTED NOVEMBER 1963).

On October 30, 1963 the Board endorsed the Record in part as follows:

"Following the hearing of this case counsel for the applicant took it upon himself to send a letter to the Registrar of the Board purporting to add to or clarify certain evidence given by one of the witnesses at the hearing. Needless to say, except with the consent of the other parties, no regard whatsoever could be given to the contents of this letter without re-opening the hearing so that the evidence could be given by the witness himself who would then be subject to cross-examination by the other parties. We wish to make it plain that the Board has reached its decision in this case without any consideration or regard for and completely uninfluenced by the contents of this letter.

The applicant trade union applies to be certified as bargaining agent for all pressmen, assistant pressmen and their apprentices employed in the printing department of the respondent's paper box company. These employees are presently included with other employees of the respondent in an industrial unit provided for in a collective agreement made between the incumbent intervener and the respondent. This agreement is effective from July 2nd, 1960 to July 2nd, 1963. At the time of the making of the agreement there were no printing pressmen in the employ of the respondent and no employees in this classification were hired by the respondent until the company established its own printing department in or about May, 1963. It was at this time and for this purpose that the respondent purchased the assets and undertakings and hired the printing staff of a printing company known as Northey Printing Company Limited. Prior to the sale of this company's assets to the respondent, the printing pressmen of Northey Printing Company Limited has been represented by the present applicant and

had been covered by a collective agreement made between the present applicant and Northey Printing Company Limited, effective from December 1st, 1959, to November 30th, 1962. Until it established its own printing department, the respondent had contracted out its printing work to Northey Printing Company Limited. The employees in the printing department of the respondent are, with the exception of one person, all former employees of Northey Printing Company Limited.

While the language of the bargaining unit provided for in the collective agreement between the intervener and respondent does encompass the printing pressmen, there is no reference whatever, either in the agreement itself or in the schedule of wage rates and job classifications attached thereto, to printing pressmen. It is manifest on the evidence that the coverage of the printing pressmen under the agreement was not due to any organizing efforts by or negotiating or bargaining on their behalf by the intervener, but simply because their employment by the respondent automatically brought them within the language of the bargaining unit contained in the collective agreement. There has been no effort shown by the intervener since the printing pressmen were employed to negotiate or bargain on their behalf to establish their rates and job classifications as an amendment to and part of the agreement.

While the applicant's witness at the hearing indicated that the applicant has had numerous certificates and agreements by virtue of which it represents the printing pressmen in craft units in companies and firms engaged in the printing business, he stated that the applicant has never before represented these persons in a craft unit when employed by a company or firm engaged in the manufacture of paper boxes.

Both the intervener and the respondent oppose the application on the grounds that in the circumstances of this case the unit sought by the applicant is inappropriate and that the Board should decline to apply the provisions of section 6(2) of The Labour Relations Act. They contend that as the applicant has no bargaining history in the paper box industry and as this industry has traditionally, as have the employees of the respondent prior to the employment of the printing pressmen, been organized on an industrial basis, compelling grounds exist for finding the unit sought by the applicant inappropriate for collective bargaining. In this respect they refer particularly to the decision of the Board in the Sheraton Brock Hotel Case, (1961) C.C.H. Canadian Labour Law Reporter, ¶16,205. In this case the Board inter alia referred to 'the nature of the industry, organizational practices in the industry, the history of collective bargaining in the industry and in the particular establishment' as some of the factors, among others, to be taken into account in the exercise of the discretion conferred upon it by section 6(2) of the Act. In the particular circumstances of the Sheraton Brock Case, however, even though the facts apparently disclosed that the engineers in the unit sought by the applicant had been part of the industrial unit for some twenty years, the Board nevertheless found the unit appropriate for collective bargaining. It is abundantly plain, however, that previous collective bargaining history in the particular industry is only one factor among others which the Board may consider in deciding whether or not to apply the provisions of section 6(2) of the Act. The importance of this factor along with others will, of course, depend on all the circumstances of the particular case.

Counsel for the applicant on the other hand argues that the facts in the instant case are distinguishable from those in previous cases where the Board has refused to apply section 6(2) on the basis of the previous bargaining.

history of the incumbent. He submits that while the applicant cannot show a history of craft representation in the paper box industry, paramount importance should be given to the fact that there has been no history of collective bargaining by the inter-vener for printing pressmen in the employ of the respondent. He also relies on the fact that the respondent is the successor to the business and the employees of Northey Printing Company Limited and that these employees were previously represented in a separate craft unit by the applicant.

The paper box industry, of course, has not always been organized on an industrial basis. Indeed the Board has in the past permitted the Amalgamated Lithographers of America, a union pertaining to a craft closely akin or allied to the craft of printing pressmen, to carve out a craft unit of lithographic employees from an industrial unit in a paper box company (see in this respect the decision of the Board in The Collett-Sproule Boxes Limited Case, Board file 898-60-R).

It is clear to us on the evidence that the group of employees, which the applicant seeks to sever as a craft unit from the existing industrial unit, work separately and are distinguishable by their craft from other employees in the industrial unit. Further, there is no doubt that the employees of the craft in question commonly bargain separately and apart from other employees through the applicant and that the applicant is a trade union which, according to established trade union practice, pertains to this craft. The fact that the applicant cannot show a previous history of collective bargaining for its craft in the particular industry in question as distinct from some other industry does not, in the circumstances of this case, persuade us that the unit claimed by it is inappropriate.

Having regard to all the circumstances of this case, including the fact that there is no history of representation by the intervener of printing pressmen in the employ of the respondent and to the fact that the printing department is a separate operation and represents the business which was purchased from Northey Printing Company Limited, the former employer of the pressmen in question for whom the applicant was the bargaining agent, and to the factors which the Board has considered as important criteria in its past decisions, (especially in the Canada Foundries and Forgings Case, (1961) C.C.H. Canadian Labour Law Reporter, ¶16,203), we are not persuaded that we should exercise our discretion against applying the provisions of section 6(2).

In the result, we find that all pressmen, assistant pressmen and their apprentices employed in the printing department of the respondent's plant at Scarborough, save and except non-working foremen and those above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining."

Board Member H.F. Irwin, while not dissenting said:

"While I concur in the end result, I do so for the following reasons.

The employees in the proposed bargaining unit actually became employees of the respondent company in May, 1963. In doing so they immediately came within the provisions of the scope clause of the existing collective agreement between the intervener and the respondent and which expired on July 2, 1963. This application was filed with the Board on June 12, 1963.

There is, however, no evidence of the intervener bargaining on behalf of these employees. Their occupational classifications, wage rates and hours of work have not been written into the said collective agreement. It cannot be said, therefore, that the intervener has actively represented them.

For these reasons, I am not prepared to exercise the discretion given me under section 6 (2) of the Act and find that the proposed bargaining unit is inappropriate and I concur in the Board's direction that a representation vote be taken."

7062-63-R: International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada Local 669 Kirkland Lake & Timmins, Ontario (Applicant) v. Timmins Theatres Limited (Respondent).
(DISMISSED NOVEMBER 1963).

The Board endorsed the Record in part as follows:

"The applicant previously applied on the 4th day of September, 1963 to be certified as bargaining agent for employees of the respondent with whom we are here concerned and this application was dismissed by the Board on October 7th, 1963, and the Board in its decision dismissing the application stated that "the Board is satisfied on the basis of all the evidence before it that less than forty-five per cent of the employees of the respondent in any bargaining unit or units that would be appropriate for collective bargaining, at the time the application was made, were members of the applicant at the material times fixed in accordance with The Labour Relations Act and the Board's Rules of Procedure."

All of the applicant's membership evidence filed in the instant application is dated prior to the making of the first application in this matter and it would therefore appear that the applicant failed to improve its membership position between the date of the first application and the date of the second application by obtaining new members during this interval. It would further appear that the applicant having been apprised of the number in the bargaining unit on October 1st, 1963 at the hearing of the first application should have been reasonably able to assess its membership position in the instant application and should have been able to ascertain that it was in a dismissal position in this application. In these special circumstances should the applicant union file a new application affecting the same employees within six months from the date hereof, the onus will be on the applicant to show that special circumstances do exist that would warrant a new application being entertained at that time."

TERMINATION INDEXED ENDORSEMENT

7107-63-R: Faultless Casters Limited (Applicant) v. International Woodworkers of America (Respondent). (GRANTED).
Capital City, Inc.

(Re: Faultless Casters Limited,
Stratford, Ontario)

On November 14, 1963 the Board endorsed the Record in part as follows:

"The respondent union was certified as the collective bargaining agent of the employees in question on May 30th, 1963. Following this, the respondent, by a registered letter dated June 3rd, 1963, notified the applicant employer of its desire to bargain and asked the company if it would advise 'at an early date, of a date suitable to

commence negotiations'. The company, which now applies under section 45 of The Labour Relations Act to terminate the union's bargaining rights, did not reply to this letter nor did it otherwise make any effort whatever to communicate with the union since its receipt of this letter. At the hearing the company sought to explain its failure to inform the union of a suitable date on which it would commence negotiations. We must say that we are entirely unimpressed with the company's explanation in this regard and accordingly can give no credence to it.

There is no evidence that the respondent union made any further efforts whatsoever to bargain with the company or to assert its bargaining rights in any way after sending its letter to the company on June 3rd. Moreover, the union did not see fit to attend the hearing to explain its position. In other words, it cannot be said that the company's conduct in failing to communicate with the union created or contributed to the situation upon which it now relies to substantiate its application for termination of bargaining rights. In these circumstances, and as the union has allowed a period of 60 days to elapse during which it has not sought to bargain, we find that a representation vote should be directed under section 45 to ascertain the wishes of the employees in the matter.

In the result, the Board directs that a representation vote be taken among the employees in the bargaining unit, described in the Board's certificate of May 30th, 1963, being all employees of the applicant at Stratford, save and except foremen, persons above the rank of foreman and sales and office staff."

On November 26, 1963 the Board further endorsed the Record as follows:

"Following the Board's decision of November 14th, 1963, directing the taking of a representation vote, the Board was informed by the respondent union that it is "relinquishing" its bargaining rights.

In these circumstances, the Board revokes that part of its decision of November 14th directing a representation vote and declares in lieu thereof that the respondent no longer represents the employees of Faultless Casters Limited for whom it has heretofore been the bargaining agent."

SECTION 34(5) INDEXED ENDORSEMENT

7042-63-M: United Brotherhood of Carpenters and Joiners of America, Local Union No. 1946 (Applicant) v. Hans Steffny Carpenter Contractor (Respondent).

The Board endorsed the Record as follows:

"Hans Steffny Carpenter Contractor and the Western Ontario District Council of the United Brotherhood of Carpenters and Joiners of America entered into a "Memorandum of Agreement" in writing dated November 21, 1962, and the question has arisen as to whether this document constitutes a collective agreement between the parties within the meaning of section 1 (1) (c) of The Labour Relations Act.

At the time that the "Memorandum of Agreement" dated November 21, 1962 was signed by the parties, Hans Steffny Carpenter Contractor employed carpenters claimed by the Western Ontario District Council of the United Brotherhood of Carpenters and Joiners of America as members. No evidence or argument was directed by the employer that the council of trade unions did not in fact represent these employees.

The Board therefore finds that the Western Ontario District Council of the United Brotherhood of Carpenters and Joiners of America represented carpenters employed by Hans Steffny Carpenter Contractor at the time the "Memorandum of Agreement" was entered into.

The Board further finds that the "Memorandum of Agreement" in writing dated November 21, 1962 is signed for and on behalf of Hans Steffny Carpenter Contractor as employer on the one hand and the Western Ontario District Council of the United Brotherhood of Carpenters and Joiners of America, a council of trade unions, that represented the employees of the employer on the other hand.

The Board further finds that the "Memorandum of Agreement" provides for a method of determining which employees of the employer are covered by the "Memorandum of Agreement" within a specified geographic area and also the hours of work, the amount of wages and the rules and regulations governing the employer and the employees, and to that extent the "Memorandum of Agreement" contains "provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer... the trade union or the employees".

The Board further finds that although the "Memorandum of Agreement" entered into by Hans Steffny Carpenter Contractor and the Western Ontario District Council of the United Brotherhood of Carpenters and Joiners of America, dated November 21, 1962, leaves a great deal to be desired as to form, it does in fact satisfy the minimum requirements of section 1 (1) (c) of The Labour Relations Act. While it is not the function of the Board at this time to interpret the collective agreement, the Board recognizes however that the wording of this document may cause difficulties with respect to the interpretation, application as well as the administration of the agreement

itself. Moreover the Board notes that certain mandatory provisions required by sections 32, 33, 34 and 35 of the Act are not included in the document and the relief offered under these sections may have to be invoked.

Despite the above noted deficiencies however, the Board finds that the "Memorandum of Agreement" dated November 21, 1962 was on the date that this matter was referred to the Board a subsisting collective agreement between Hans Steffny and the Western Ontario District Council of the United Brotherhood of Carpenters and Joiners of America."

PART 2

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TABLE I

APPLICATIONS & COMPLAINTS TO THE ONTARIO LABOUR RELATIONS BOARD

		Number of applications filed		
		Nov 1st 1963	8 months of fiscal year 63-64	62-63
I	Certification	68	509	513
II	Declaration Terminating Bargaining Rights	3	55	52
III	Declaration of Successor Status	1	21	11
IV	Conciliation Services	99	771	847
V	Declaration that Strike Unlawful	-	27	26
VI	Declaration that Lockout Unlawful	1	4	7
VII	Consent to Prosecute	10	107	67
VIII	Complaint of Unfair Practice in Employment (Section 65)	13	104	88
IX	Miscellaneous	2	14	18
	TOTAL	<u>197</u>	<u>1612</u>	<u>1629</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

		Number		
		Nov 1st 1963	8 months of fiscal year 63-64	62-63
	Hearings & Continuation of Hearings by the Board	81	722	651

TABLE III

APPLICATIONS & COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR
RELATIONS BOARD BY MAJOR TYPES

		Number of applications disposed of Nov 1st 8 months of fiscal year		
		1963	63-64	62-63
I	Certification	60	532	570
II	Declaration Terminating Bargaining Rights	6	74	56
III	Declaration of Successor Status	16	21	3
IV	Conciliation Services	85	780	831
V	Declaration that Strike Unlawful	1	27	26
VI	Declaration that Lockout Unlawful	-	2	9
VII	Consent to Prosecute	6	110	115
VIII	Complaint of Unfair Practice in Employment (Section 65)	11	105	94
IX	Miscellaneous	<u>3</u>	<u>7</u>	<u>10</u>
	TOTAL	<u>188</u>	<u>1658</u>	<u>1714</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY TYPES AND BY DISPOSITION

Disposition	Nov 1st 8 mos fiscal yr.			*Employees		
	'63	63-64	62-63	'63	63-64	62-63
<u>I Certification</u>						
Granted	38	378	382	1011	10500	24505
Dismissed	14	95	137	340	3216	8914
Withdrawn	8	60	51	243	946	1688
TOTAL	60	533	570	1594	14662	35107
<u>II Termination of Bargaining Rights</u>						
Terminated	5	50	33	164	1364	1024
Dismissed	-	21	15	-	495	457
Withdrawn	1	3	8	-	85	233
TOTAL	6	74	56	164	1944	1714

*These figures refer to the number of employees directly affected and are based on the number of employees in the bargaining units at the time the applications for certification were filed with the Board. Totals for applications dismissed and withdrawn are approximate.

-S39 - APPLICATIONS DISPOSED OF BY
BOARD (continued)

Number of appl'ns disposed of
Nov 1st 8 mos fiscal year.
1963 63-64 62-63

III Conciliation Services*

Referred	73	725	741
Dismissed	2	14	16
Withdrawn	<u>10</u>	<u>41</u>	<u>74</u>
TOTAL	<u>85</u>	<u>780</u>	<u>831</u>

IV Declaration that
Strike Unlawful

Granted	1	6	6
Dismissed	-	3	7
Withdrawn	<u>-</u>	<u>18</u>	<u>13</u>
TOTAL	<u>1</u>	<u>27</u>	<u>26</u>

V Declaration that
Lockout Unlawful

Granted	-	-	1
Dismissed	-	1	5
Withdrawn	<u>-</u>	<u>1</u>	<u>2</u>
TOTAL	<u>-</u>	<u>2</u>	<u>8</u>

VI Consent to
Prosecute

Granted	6	37	17
Dismissed	-	9	8
Withdrawn	<u>-</u>	<u>64</u>	<u>90</u>
TOTAL	<u>6</u>	<u>110</u>	<u>115</u>

*Includes applications for conciliation services re unions
claiming successor status.

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY THE BOARD

	Nov 1st '63	8 months of fiscal yr. 63-64	8 months of fiscal yr. 62-63
<u>*Certification After Vote</u>			
pre-hearing vote	-	16	28
post-hearing vote	6	44	17
ballots not counted	-	-	2
<u>Dismissed After Vote</u>			
pre-hearing vote	1	9	15
post-hearing vote	2	38	45
ballots not counted	-	1	1
TOTAL	<u>9</u>	<u>108</u>	<u>108</u>

*Includes applicant - intervener applications in which both applicant and intervener apply for a new unit and either applicant or intervener is certified.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY THE BOARD

	Number	Nov 1st '63	8 months of fiscal yr. 63-64	8 months of fiscal yr. 62-63
<u>*Respondent Union Successful</u>				
Respondent Union Successful	-	5	5	5
Respondent Union Unsuccessful	<u>3</u>	<u>25</u>	<u>14</u>	
TOTAL	<u>3</u>	<u>30</u>	<u>29</u>	

*In termination proceedings where a vote is taken, the applicant is a group of employees, or the employer; the incumbent union is thus the respondent.

MONTHLY REPORT



DECEMBER 1963

ONTARIO LABOUR RELATIONS BOARD

PRACTICE NOTE #7

January 4, 1964.

PRACTICE ON REQUEST BY APPLICANT
TO WITHDRAW APPLICATION FOR
CERTIFICATION OR FOR DECLARATION
TERMINATING BARGAINING RIGHTS

1. Where, on an application for certification or for a declaration terminating bargaining rights, the applicant has notified the Board, before the hearing on the application and at a time when the Registrar has been able to notify the parties that the hearing has been cancelled, that it was desirous of withdrawing the application, the Board has permitted the applicant to withdraw the application. (See Kitchen Installations Case, cited in (1963) C.C.H. Canadian Labour Law Reports, ¶16,27⁴, p. 13,296, C.L.S. 76-915, at p. 76-916)

2. Where a request for leave to withdraw is made

(i) at the hearing, or

(ii) before the hearing at a time when the Registrar has not been able to notify the parties that the hearing has been cancelled and the respondent or any other interested person or trade union has attended at the hearing,

it has been the practice of the Board to endorse the record to show that, although the applicant has requested leave to withdraw its application, the application has been dismissed. See, however, paragraphs 3 and 4 below.

3. Where, at a hearing, an applicant has requested leave to withdraw its application on the ground that it had entered into an agreement with the respondent between the time the application was made and the date of the hearing, the Board has permitted the applicant to withdraw the application. See Irving & Harding Case, Board File 7207-63-R. O.L.R.B. Monthly Report, Nov. 25, 1963, p. 431.

4. Where, at the hearing, an applicant has requested leave to withdraw its application on the ground that the respondent municipality, as defined in The Department of Municipal Affairs Act, has declared that the Act does not apply to it in its relation with its employees or some of them, the Board's endorsement has stated that, in view of the declaration, the Board has no jurisdiction to process the application further.

5. Where, on an application for a pre-hearing representation vote, after an examiner has been appointed and has met with the parties, an applicant requests leave to withdraw its application, the Board in its endorsement has noted the request to withdraw and has dismissed the application. See Lake Simcoe Ice & Enterprises Limited Case, O.L.R.B. Monthly Report, June, 1963, p. 159.

6. Where a request for leave to withdraw is made by an applicant after a vote has been directed, the Board has dismissed the application and in its endorsement has

drawn the attention of the parties to the decision of the Board in the Mathias Ouellette Case, (1955) C.C.H. Canadian Labour Law Reports Transfer Binder '55-'59, ¶16,026, C.L.S. 76-485.

7. Notwithstanding the foregoing, if, at a hearing, an applicant requests leave to withdraw an application and the opposing parties consent thereto, leave to withdraw will be granted.

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No Vote Conducted

6596-63-R: International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local 938, General Truck Drivers (Applicant) v. Armstrong Transport (Respondent).

Unit: "all employees of the respondent at Newmarket, save and except foremen, persons above the rank of foreman, dispatchers, office and sales staff." (15 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 504)

6723-63-R: Retail Clerks International Association (Applicant) v. Dominion Stores Limited (Respondent).

Unit: "all employees of the respondent in its store in K-Mart Plaza in Waterloo Township, save and except store manager, assistant store manager, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (37 employees in the unit).

On December 19, 1963 the Board further endorsed the Record as follows:

"The Board has considered the representations of the applicant as set forth in its telegram dated December 12th, 1963, wherein the applicant has requested the Board to reconsider its decision dated December 9th, 1963 in this matter.

The Board considered all the representations with respect to the area description of the bargaining unit made by the parties prior to reaching its decision dated December 9th, 1963. Since certain exclusions from the bargaining unit were made on the basis of conditions in this particular store, the certificate was restricted to one location. The applicant has not alleged new evidence is now available to it which was not available to it at the time of the hearing or at the time of the examiner's meeting in this matter and since the parties had opportunities to make their representations with respect to this issue at the hearing before the Board and to the examiner, the Board does not consider it advisable to reconsider its decision dated December 9th, 1963 or to vary or revoke such decision.

The Request of the applicant is accordingly dismissed."

6805-63-R: United Rubber, Cork, Linoleum & Plastic Workers of America, AFL-CIO-CLC (Applicant) v. National Seal Division of Oil Seals Ltd. (Respondent) v. The Canadian Rubber Workers Union, No. 154, N.C.C.L. (Intervener).

Unit: "all employees in the National Seal Division of the respondent at Stratford, save and except foreman and forelady, office and sales staff." (33 employees in the unit).

(WRITTEN REASONS)

7051-63-R: Amalgamated Lithographers of America, Local #47, London, Ontario (Applicant) v. Press Engravers Limited (Respondent).

Unit: "all lithographers, their apprentices and helpers in the employ of the respondent at London, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

(AGREEMENT OF THE PARTIES).

7157-63-R: Fur Workers' Union, Local 82, affiliated with the Amalgamated Meat Cutters & Butcher Workmen of North America (Applicant) v. Wm. Lech & Sons Limited (Respondent).

Unit: "all employees of the respondent at Peterborough, save and except foremen, persons above the rank of foreman, retail sales help, drivers, designers and office staff." (6 employees in the unit).

(AGREEMENT OF THE PARTIES)

7160-63-R: United Steelworkers of America (Applicant) v. Picton Garage Company Limited (Respondent) v. General Truck Drivers' Union, Local 879 (Intervener).

Unit: "all employees of the respondent at Hamilton, save and except foremen, persons above the rank of foreman, office staff and persons regularly employed for not more than 24 hours per week." (8 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 501)

7182-63-R: Sign and Pictorial Local 1630 of the Brotherhood of Painters, Decorators and Paperhangers of America (Applicant) v. Steel Art Company Limited (Respondent).

Unit: "all employees of the respondent working at and out of Metropolitan Toronto, save and except foremen, persons above

the rank of foreman, office and sales staff, students employed under the Waterloo University training program and students employed during the school vacation period." (35 employees in the unit).

7192-63-R: Sarnia Typographical Union No. 837 (Applicant) v. Sarnia Gazette Publishing Company Limited (Respondent).

Unit: "all employees of the respondent at Sarnia performing composing room and pressroom work, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

(AGREEMENT OF THE PARTIES)

7193-63-R: Toronto Printing Pressmen & Assistants' Union No. 10 (Applicant) v. Rainbow Thermographers Co. (Respondent)

Unit: "all pressmen, assistant pressmen and their apprentices in the employ of the respondent at Metropolitan Toronto, save and except foremen, and persons above the rank of foreman." (5 employees in the unit).

(AGREEMENT OF THE PARTIES)

7216-63-R: United Steelworkers of America (Applicant) v. Federal Wire & Cable Company (Respondent).

Unit: "all office, clerical and technical employees of the respondent at Guelph, save and except supervisors, persons above the rank of supervisor, sales staff, nurses, and one secretary to each of the following: vice-president, personnel manager, controller and purchasing agent." (51 employees in the unit).

7217-63-R: International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers Local 141, Warehousemen and Miscellaneous Drivers (Applicant) v. Stark Truck Service (London) Ltd. (Respondent).

Unit: "all employees of the respondent at London, save and except foremen, persons above the rank of foreman, and office staff." (10 employees in the unit).

7230-63-R: Bakery & Confectionery Workers' International Union of America, Local 264, Toronto, Ontario (Applicant) v. Kitchens of Sara Lee (Canada) Limited (Respondent).

Unit: "all employees of the respondent at its plant in the Township of Chingacousy, save and except foremen, persons above

the rank of foreman, office and sales staff, retail clerks, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (41 employees in the unit).

7231-63-R: Local #28, International Brotherhood of Bookbinders (Applicant) v. Howarth & Smith Monotype Limited (Respondent).

Unit: "all employees of the respondent at Toronto, save and except foremen, persons above the rank of foreman, office and sales staff and those covered by subsisting collective agreements between the respondent and The Toronto Typographical Union No. 91 I.T.U. and Toronto Printing Pressmen and Assistants' Union No. 10." (12 employees in the unit).

The Board endorsed the Record in part as follows:

"Having regard to the exhibits filed by the applicant which show that the applicant and another local of the International Brotherhood of Bookbinders have entered into collective agreements with a number of employers covering employees in the occupational classifications applied for in this case, the Board is satisfied that the applicant has jurisdiction to represent these employees in collective bargaining. (see John E. Riddell and Son Ltd. Case 1957 C.C.H. Canadian Labour Law Reporter, Transfer Binder '55-'59 16,085; C.L.S. 76-455)."

7242-63-R: United Brotherhood of Carpenters and Joiners of America, Local Union 2480 (Applicant) v. P.R. Connolly Construction Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices employed by the respondent in the County of Simcoe, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 502)

7254-63-R: The Canadian Guards Association, (Applicant) v. John Inglis Company Limited (Respondent).

- and -

7282-63-R: The Canadian Guards Association (Applicant) v. John Inglis Company Limited (Respondent).

(THE ABOVE MATTERS ARE CONSOLIDATED)

Unit: "all security guards employed by the respondent in Metropolitan Toronto, save and except chief security officers and persons above the rank of chief security officer." (20 employees in the unit).

7256-63-R: Canadian Union of Public Employees (Local Union #893) (Applicant) v. The Board of Education for the City of Sault Ste. Marie (Respondent).

Unit: "all office employees of the respondent at Sault Ste. Marie, save and except department heads, persons above the rank of department head, attendance counsellors, maintenance and stores personnel, one confidential secretary to each of the following: the Director of Education, the Business Administrator, School Inspectors, the Administrative Assistant for operation and supplies, and the Administrative Assistant for accounting, and all persons regularly employed for not more than 24 hours per week." (25 employees in the unit).

7257-63-R: Garage Employees Lodge No. 1120, International Association of Machinists, (Applicant) v. Powell Equipment Company, Limited (Respondent).

Unit: "all employees of the respondent at Port Arthur, save and except supervisors, persons above the rank of supervisor, persons in the administrative and general office departments, the sales division, the service department, and the maintenance department." (13 employees in the unit).

(AGREEMENT OF THE PARTIES)

The Board endorsed the Record in part as follows:

"On June 2nd, 1960, The International Hod Carriers' Building and Common Labourers' Union of America, Local No. 607, was certified as the bargaining agent of employees of the respondent affected by this application. On November 18th, 1963, the Registrar served notice of this application by registered mail on this trade union but it did not file an intervention in this matter. Following the hearing in this matter this union informed the Board by telegram on December 18th, 1963, that it no longer claimed to represent employees of the respondent. In these circumstances, the Board finds that The International Hod Carriers' Building and Common Labourers' Union of America, Local No. 607, has abandoned the bargaining rights it acquired under the Board's certificate of June 2nd, 1960. Accordingly, the present application is properly before the Board."

7258-63-R: Heirloom of Canada Union (Applicant) v. Heirloom of Canada Limited (Respondent).

Unit: "all employees of the respondent at Chesley, save and except foremen, persons above the rank of foreman and office and sales staff." (56 employees in the unit).

7276-63-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Fotheringham's Speedy Service Cleaners, Limited (Respondent).

Unit: "all route salesmen employed by the respondent at Hamilton, save and except supervisors and persons above the rank of supervisor." (7 employees in the unit).

7279-63-R: Amalgamated Lithographers of America, Local 12 (Applicant) v. Parr's Print & Litho Ltd. (Respondent).

Unit: "all cameramen, strippers, platemakers, pressmen, feeders and press helpers in the lithographic department of the respondent in Metropolitan Toronto, save and except non-working foremen and persons above the rank of non-working foreman." (27 employees in the unit).

(AGREEMENT OF THE PARTIES)

7284-63-R: District 50, United Mine Workers of America (Applicant) v. Diamond Cleanser & Soaps Company (Respondent).

Unit: "all employees of the respondent at Long Branch, save and except foremen, persons above the rank of foreman, and office and sales staff." (4 employees in the unit).

7297-63-R: District 50, United Mine Workers of America (Applicant) v. Aluminum Star Products Limited (Respondent).

Unit: "all employees of the respondent at Belleville, save and except foremen, persons above the rank of foreman and office and sales staff." (20 employees in the unit).

7298-63-R: International Union of Operating Engineers, Local Union 557 (Applicant) v. Dryden High School Board (Respondent).

Unit: "all stationary engineers and persons primarily engaged as their helpers in the employ of the respondent at Dryden, save and except persons regularly employed for not more than 24 hours per week." (4 employees in the unit).

7299-63-R: Teamsters' Local Union No. 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers, I.B. of T. (Applicant) v. Softley Cartage Limited (Respondent).

Unit: "all employees of the respondent employed at or working out of Metropolitan Toronto, save and except foremen, persons above the rank of foreman and office and sales staff." (10 employees in the unit).

7305-63-R: Shopmen's Local Union #743 of the International Association of Bridge, Structural and Ornamental Iron Workers (affiliated with the A.F.L.-C.I.O., C.L.C.) (Applicant) v. Frankel Steel Construction Limited (Respondent).

Unit: "all employees of the respondent at its shop in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, stationary engineers, office staff and persons covered by subsisting collective agreements between the applicant and respondent and between Local #721 of the International Association of Bridge, Structural and Ornamental Iron Workers and the respondent." (16 employees in the unit).

(AGREEMENT OF THE PARTIES)

7322-63-R: Sheet Metal Workers' International Association, Local Union 568 (Applicant) v. The Dumont Aluminum Limited (Respondent).

Unit: "all employees of the respondent at its plant in Hamilton, save and except foremen, persons above the rank of foreman, service men and installers, office and sales staff." (54 employees in the unit).

7327-63-R: International Hod Carriers Building and Common Labourers Union of America Local 527 (Applicant) v. Ron Engineering and Construction Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent working at or out of Smiths Falls, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

The Board endorsed the Record in part as follows:

"Neither the applicant nor the respondent have asked for a hearing in this case. The applicant proposes as the geographic area "at or working out of

Smiths Falls." The respondent proposes "Smiths Falls and within a five mile radius thereof." In a number of previous cases involving construction projects in Smiths Falls or Perth the Board has granted an area consisting of the County of Lanark. This has become a relatively standard practice for carpenters and in one case the parent union of the present applicant was granted a similar area. See Unicrete Construction Limited, O.L.R.B. Monthly Report, July, 1963, p. 187. However there is on file with the Board a collective agreement between the applicant and two Ottawa contractors covering labourers and certain other classifications "working in or out of the Town of Smiths Falls." This agreement is currently in force and will remain in effect until April 30th, 1965. Furthermore while the Board has in the past granted areas in terms of a radius as proposed by the respondent it is in general opposed to such a description. After due consideration of all the circumstances of this case we are agreed that the area should be in the form proposed by the applicant.

The applicant is proposing the inclusion of non-working foremen while the respondent submits that foremen should be excluded. The regular practice of the Board in construction industry cases is to exclude non-working foremen and persons above that rank. In the present case the respondent, through its solicitor, has informed the Board that on the date of the making of the application the respondent had no working foremen in its employ though on occasion it does have such persons. Assuming, but without deciding, that the respondent's working foremen exercise managerial functions, it is not the practice of the Board to exclude managerial classifications not present on the date of the making of the application."

7336-63-R: United Steelworkers of America (Applicant) v. Nicholson File Company of Canada Limited (Respondent).

Unit: "all employees of the respondent situated in Port Hope, save and except sub-foremen, those above the rank of sub-foreman, office staff and nurse." (227 employees in the unit).

7339-63-R: The Canadian Union of Operating Engineers, Local 101 (Applicant) v. Anglo Canada Fire and General Insurance Company (Respondent).

Unit: "all stationary engineers employed by the respondent in its boiler room at 76 St. Clair Avenue West at Toronto." (4 employees in the unit).

7353-63-R: Canadian Union of Public Employees, Local 767 (Applicant) v. City of Toronto Limited Dividend Housing Corporation Limited (Respondent) v. Toronto Civic Employees Union Local 43 (Intervener).

Unit: "all employees of the respondent, save and except supervisors, persons above the rank of supervisor and office staff." (7 employees in the unit).

7355-63-R: Canadian Union of Public Employees (Applicant) v. Board of Trustees of the Roman Catholic Separate Schools for the City of St. Catharines. (Respondent).

Unit: "all employees of the respondent engaged in caretaking and maintenance of schools at St. Catharines, save and except supervisors, persons above the rank of supervisor and office staff." (28 employees in the unit).

7365-63-R: Canadian Plastic Workers' Union, No. 182, National Council of Canadian Labour (Applicant) v. Somerville Plastics Limited (Respondent).

Unit: "all employees of the respondent in the Township of Chinguacousy, save and except foremen, persons above the rank of foreman, and office and sales staff." (100 employees in the unit).

7366-63-R: Canadian Union of Public Employees (Applicant) v. Board of R.C. Separate School Trustees (Oshawa) (Respondent).

Unit: "all employees of the respondent engaged in caretaking and maintenance of schools at Oshawa, save and except foremen, persons above the rank of foreman, office staff and persons regularly employed for not more than 24 hours per week." (20 employees in the unit).

7367-63-R: Teamsters Chauffeurs Warehousemen and Helpers Local Union No. 880 affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Essex Farmers Limited (Respondent).

Unit: "all employees of the respondent in its feed mill division at Essex, save and except working foremen, persons above the rank of working foreman, buyers, and office and sales staff." (17 employees in the unit).

(AGREEMENT OF THE PARTIES)

7371-63-R: International Union of Operating Engineers, Local 793 (Applicant) v. The Foundation Company of Canada Limited (Respondent).

Unit: "all employees of the respondent working at or out of the Township of Boston, District of Temiskaming, engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same; tower hoist operators; compressor operators; engineers operating batching plants, and temporary heating plants, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

7375-63-R: United Brotherhood of Carpenters and Joiners of America Local 1988 (Applicant) v. Ron Engineering & Construction Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Lanark, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

7380-63-R: United Cement, Lime & Gypsum Workers International Union, C.L.C. (Applicant) v. Harry Haley & Sons Ltd. (Respondent).

Unit: "all employees of the respondent at Ottawa and Eastview, save and except foremen, persons above the rank of foreman and office staff." (29 employees in the unit).

7381-63-R: International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers Local 938 General Truck Drivers (Applicant) v. Shippers Despatch (Canada) Ltd. (Respondent).

Unit: "all employees of the respondent in the Township of Toronto, save and except foremen, persons above the rank of foreman and office and sales staff." (12 employees in the unit).

7382-63-R: General Truck Drivers Local 879 International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers (Applicant) v. Husband Transport Limited (Respondent).

Unit: "all employees of the respondent at Welland, save and except dispatchers, foremen, persons above the rank of foreman, and office and sales staff." (7 employees in the unit).

7393-63-R: International Woodworkers of America (Applicant) v. A. E. Wicks Limited (Respondent).

Unit: "all employees of the respondent at New Liskeard, save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (30 employees in the unit).

7414-63-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (U.A.W.) (Applicant) v. Dominion Forge Company A Division of Canman Industries Limited (Respondent).

Unit: "all office and clerical employees of the respondent at Windsor, save and except supervisors and foremen, persons above the rank of supervisor and foreman, plant nurses, personnel department employees, chief draftsman, purchasing agent, assistant purchasing agent, sales and service representatives, general accountant, confidential secretaries to department managers and persons above the rank of department manager." (28 employees in the unit).

(AGREEMENT OF THE PARTIES).

7415-63-R: International Woodworkers of America (Applicant) v. R. Laidlaw Lumber Company Limited (Respondent).

Unit: "all employees of the respondent at London, save and except foremen, persons above the rank of foreman, office and sales staff and security guards." (6 employees in the unit).

7424-63-R: United Brotherhood of Carpenters and Joiners of America, Local 1988 (Applicant) v. Doane-Designed Industrial Buildings (Respondent). (6 employees in the unit).

The Board endorsed the Record in part as follows:

"In this application, the applicant union proposes an area consisting of a number of northern townships in the Counties of Leeds and Grenville (omitting South Burgess and South Elmsley) along with Marlborough in the County of Carleton and McNab in Renfrew. Most of these townships border on the County of Lanark and all of them, together with the County of Lanark and the townships of South Burgess and South Elmsley, form the geographical jurisdiction of Local 1988, the applicant union.

The job site of the employees affected by the application is Kemptville which appears to be in the township of Oxford in the County of Grenville and one of the townships referred to above.

In a number of recent decisions the Board has found the County of Lanark to be an appropriate geographic area. The Board has also found that certain southern townships in Leeds and Grenville constitute an appropriate geographic area or areas.

Having regard to the geographic jurisdictions of locals of a number of different construction trade unions in Eastern Ontario and to the patterns of collective bargaining among these unions as evidenced by collective agreements on file with the Board, it is clear that no pattern is discernible with respect to the area proposed by the applicant in the present application. The Board will require a good deal of information from applicants, other unions and employer associations before being in a position to determine what should be done with the area under consideration. In so far as the unions are concerned, the Board will be interested in ascertaining how the various locals have acquired their geographical limits.

The Board has indicated recently that when suitable occasions arise the various interested parties will be given an opportunity to express their views. It is to be hoped that all persons invited by the Board to participate will avail themselves of the opportunity. The Board notes that on one occasion where parties were invited to make representations, while there was effective employer participation on the provincial level, very few unions were represented.

Having regard to our findings set out above with respect to the area under consideration, and in the circumstances of this case, the Board further finds that all carpenters and carpenters' apprentices in the employ of the respondent in the Townships of Oxford and South Gower in the County of Grenville, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining.

The area granted in this case must not be considered as reflecting the final thinking of the Board either with respect to that particular area or the area proposed in this case."

Certified Subsequent to Pre-Hearing Vote

6866-63-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. General Freezer Limited (Respondent).

Unit: "all employees of the respondent at its plant in Vaughan Township, save and except foremen, persons above the rank of foreman and office and sales staff." (57 employees in the unit).

Number of names on revised eligibility list	51
Number of ballots cast	51
Number of ballots marked in favour of applicant	39
Number of ballots marked as opposed to applicant	12

On November 5, 1963 the Board endorsed the Record in part as follows:

"For the reasons to be given in writing, the Board finds that this application is timely."

7002-63-R: Walker's Bakery Salesmen Trade Union (Applicant) v. The Walker Bakeries Limited (a Division of General Bakeries Limited) (Respondent).

Unit: "all driver salesmen and special delivery drivers in the employ of the respondent at Ottawa, save and except supervisors, persons above the rank of supervisor and persons classified by the respondent as stale room employees." (52 employees in the unit).

Number of names on revised eligibility list	49
Number of ballots cast	47
Number of ballots marked in favour of applicant	33
Number of ballots marked as opposed to applicant	14

Certified Subsequent to Post-Hearing Vote

6478-63-R: United Steelworkers of America (Applicant) v. Rosco Metal Products Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week, and persons engaged in outside erection work off the respondent's plant properties." (306 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 493)

Number of names on revised eligibility list	279
Number of ballots cast	277
Number of spoiled ballots	2
Number of segregated ballots (not counted)	6
Number of ballots marked in favour of applicant	161
Number of ballots marked as opposed to applicant	108

7039-63-R: Hamilton General Workers Union, Local 202 - C.L.C.
(Applicant) v. National Sewer Pipe Limited (Respondent).

Unit: "all employees of the respondent at its plant in Hamilton
and at its open pit operation in Burlington, save and except
foremen, persons above the rank of foreman and office staff."
(44 employees).

Number of names on revised eligibility list	42
Number of ballots cast	42
Number of ballots marked in favour of applicant	36
Number of ballots marked as opposed to applicant	6

Certification Dismissed - No Vote Conducted

6701-63-R: The Canadian Union of Operating Engineers (on
behalf of its Local 104) (Applicant) v. B.F. Goodrich Canada
Limited (Respondent) v. United Rubber, Cork, Linoleum and
Plastic Workers of America, Local 677 (Intervener).
(4 employees).

(SEE INDEXED ENDORSEMENT PAGE 497)

6781-63-R: International Molders and Allied Workers Union
AFL.CIO.CLC. and its Local 428 of Belleville (Applicant) v.
Trudeau Motors Limited (Respondent).

Unit: "all employees of the respondent employed at its equipment
division at Belleville, save and except foremen, persons above
the rank of foreman, office and sales staff and students
employed during the school vacation period." (7 employees in
the unit).

(AGREEMENT OF THE PARTIES)

On November 13, 1963 the Board endorsed the Record in part as follows:

"Having regard to the size of the bargaining unit and the fact that there are only two persons employed in the parts department, for the purposes of clarity, the Board declares that Gerald Bailey and Jack Reginald Beare are employees of the respondent included in the bargaining unit."

Board Member, D. B. Archer dissented and said:

"I dissent. I would have excluded the parts department from the bargaining unit and accordingly would have found that Gerald Bailey and Jack Reginald Beare not be included in the bargaining unit and would have certified the applicant as bargaining agent."

On December 2, 1963 the Board further endorsed the Record as follows:

"An examiner was appointed by the Board to inquire into the composition of the bargaining unit on September 11th, 1963.

On November 13th, 1963, the Board directed that a representation vote be taken among certain employees of the respondent.

The applicant having been notified of the Board's decision directing a vote wrote to the Board and requested that the Board grant permission for the applicant to withdraw because "there has been some change in the employees of the respondent" and a vote in its opinion would be a waste of time for all parties.

For the reasons given by the Board in the Mathias Ouellette Case, 1955 C.C.H., Canadian Labour Law Reporter, Transfer Binder #16,026, C.L.S. 76-485, the Board dismisses this application.

The Board will entertain representations by the parties on the timeliness of any new application made by the applicant within the period of six months from the date hereof affecting any employees of the respondent described in the bargaining unit."

7356-63-R: Teamsters' Local Union No. 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers, of the International Brotherhood of Teamsters (Applicant) v. Community Building Supplies Ltd. (Metropolitan Toronto) (Respondent). (4 employees).

The Board endorsed the Record as follows:

"This application for certification is made with respect to the garage employees of the respondent in Metropolitan Toronto. There is a subsisting collective agreement in effect between the applicant and the respondent in which the respondent recognizes the applicant as the bargaining agent for "all employees of the Company save and except foremen, persons above the rank of foreman, and office staff". At the hearing in this matter the parties agreed that the garage employees were bound by this agreement. Having in mind that the applicant is already the bargaining agent for the employees affected by this application, its application must be dismissed. (See the Loblaw Groceteria Case, (1944) D.L.S. 7-115.)"

7429-63-R: International Hod Carriers Building and Common Labourers Union of America, Local # 493 (Applicant) v. Marson Construction Company Limited (City of Sault Saint Marie and in the townships of Prince, Korah and Tarentorous and in the unorganized townships of Parke and Awenge and in the townships immediately adjacent thereto) (Respondent).

The Board endorsed the Record in part as follows:

"The applicant failed to file with the Board Form 60, Declaration Concerning Membership Documents, Construction Industry, and also failed to file evidence of membership within the time fixed in accordance with The Labour Relations Act and the Board's Rules of Procedure. In accordance with its usual practice the application is therefore dismissed."

Applications for Certification Dismissed Subsequent to Pre-Hearing Vote

7296-63-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Silverwood Dairies Limited (Respondent).

Voting constituency and ruling of screening committee concerning eligibility:

"all employees of the respondent employed at or working out of Stratford, with the following exceptions:

- (a) Executive officers, office staff, engineers, plant protection employees, sales managers, foremen and persons above the rank of foreman, and
- (b) persons hired for part time work working 24 hours or less per week, and
- (c) persons hired for vacation period, relief or seasonal work, provided however that any such person employed continuously for a period of more than six (6) months be included in the bargaining unit." (17 employees in the constituency).

Number of names on revised eligibility list	16
Number of ballots cast	16
Number of ballots marked in favour of applicant	6
Number of ballots marked in favour of Silverwood Employees Association	10

Applications for Certification Dismissed Subsequent to
Post-Hearing Vote

6721-63-R: United Steelworkers of America (Applicant) v. FWD
Corporation (Canada) Ltd. (Respondent).

Unit: "all employees of the respondent at Kitchener, save and except foremen, persons above the rank of foreman and office staff." (47 employees in the unit).

On November 6, 1963 the Board endorsed the Record in part as follows:

"The applicant having applied as bargaining agent for the above unit of employees, filed a total of 32 application cards and counter-signed receipts in support of its application in this matter. The respondent filed lists containing the names of 47 employees. At the first hearing, the respondent challenged 2 of the membership documents filed by the applicant and alleged that no money had been paid as initiation fees with respect to the two challenged

documents. The Board conducted its usual inquiry with respect to the alleged 'non pays' and subsequently directed a hearing to inquire into the allegations of 'non pay'. Having heard all the evidence with respect to the matter, counsel for the parties in accordance with the Board's direction, submitted written argument with respect to these allegations.

It would appear from the evidence that George Brick and Henry Brick employees of the respondent, were not officers but were unpaid organizers of the applicant union and were the only persons who acted as collectors in signing employees of the respondent as members of the applicant union. It would further appear that the majority of cards were signed on Thursday, August 8th but in a great many instances no money was collected until Friday, August 9th, although the receipts for payment of money were given to the employees at the time the application for membership cards were signed. The evidence indicates that of the total of 16 membership cards signed by George Brick, no money was collected at the time of signing from 10 persons who signed the application cards. George Brick thought he collected the initiation fee from each of these 10 people the following day at work. However, due to the fact that the employees felt they had to act surreptitiously in an effort to prevent the employer from obtaining knowledge of their activity, certain employees 'slipped' the initiation fee to George Brick on August 9th and no record was kept by George Brick of these transactions. George Brick admitted that it was possible that he failed to collect the initiation fee from a Mr. Roussel on the Friday, however Mr. Roussel categorically denied making such payment on Friday or any other day.

Mr. Britnell denied that George Brick collected any money from him at the time the application card was signed and the receipt given on August 8th and further denied that the initiation fee was paid on any subsequent date. Although George Brick believes he collected money from Mr. Britnell, he did not have any clear recollection of Mr. Britnell handing money to him and he acknowledged that he did not receive any money from Mr. Britnell subsequent to August 8th and further admitted the possibility that Mr. Britnell did not pay any money although he in fact believes the money was paid.

Having regard to all the evidence, we are not satisfied with the quality of the evidence of membership with respect to Mr. Roussel and Mr. Britnell. Although we are satisfied that there has been no deliberate attempt to deceive the Board, in view of these findings, the manner in which the cards were signed and the receipts given with respect to at least 10 of the membership documents and the subsequent manner in which money was received with no record kept, we find that there is sufficient laxity in the way in which the entire organizing campaign was carried on so as to weaken the evidence of membership submitted by the applicant so as to make it necessary for the Board to seek the confirmatory evidence of a representation vote in this case.

In view of these findings it will not be necessary for the Board to conduct a hearing to inquire into the documents filed by some of the employees of the respondent to the application of the applicant and accordingly it will not be necessary for the Board to conduct a hearing with respect to the charges filed by the applicant with respect to the document in opposition to this application."

Board Member G. R. Harvey dissented and said:

"I dissent. In view of the conflicting testimony of Eli Britnell and his wife on the circumstances surrounding his sign up, I would attach little weight to this claim of irregularity.

There is nothing to indicate the failure to pay by George Roussel was anything but an honest oversight that cannot be considered as an attempt to defraud the Board. This card should properly be disallowed but in view of all the circumstances doubt should not attach to the remaining cards.

I would certify the applicant without a vote."

Number of names on revised eligibility list	56
Number of ballots cast	56
Number of ballots spoiled	1
Number of ballots marked in favour of applicant	18
Number of ballots marked as opposed to applicant	37

6969-63-R: International Chemical Workers Union (Applicant) v. Harts Products Company of Canada Limited (Respondent).

Unit: "all employees of the respondent at Guelph, save and except foremen, persons above the rank of foreman, office, sales and laboratory staff, and students hired for the school vacation period." (43 employees in the unit).

Number of names on revised eligibility list	43
Number of ballots cast	43
Number of ballots marked in favour of applicant	14
Number of ballots marked as opposed to applicant	29

7022-63-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Local Cartage Company (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman and office staff." (18 employees in the unit).

Number of names on eligibility list	20
Number of ballots cast	20
Number of ballots marked in favour of applicant	5
Number of ballots marked as opposed to applicant	15

7097-63-R: United Steelworkers of America (Applicant) v. Jarry Hydraulics Limited Jarry Electronics Division (Respondent).

Unit: "all employees of the respondent at Hawkesbury, save and except foremen, persons above the rank of foreman, office staff and persons regularly employed for not more than 24 hours per week." (75 employees in the unit).

Number of names on revised eligibility list	75
Number of ballots cast	75
Number of ballots marked in favour of applicant	31
Number of ballots marked as opposed to applicant	44

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING DECEMBER 1963

7320-63-R: United Brotherhood of Carpenters & Joiners of America (Applicant) v. C & E Construction Supplies Company 267 Dundas Street, London, Ontario (Respondent). (3 employees).

7379-63-R: Disposal Services Council (Applicant) v. Disposal Services Company (Respondent). (94 employees).

7430-63-R: Hotel & Restaurant Employees' & Bartenders International Union, AFL-CIO Local 853 (Applicant) v. Simcoe Hotel (Barrie) (Respondent). (9 employees).

7444-63-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Rockwynne Development Company (Respondent). (3 employees).

APPLICATIONS FOR TERMINATION DISPOSED OF DURING DECEMBER 1963

7481-63-R: Dolores Stewart (Applicant) v. Retail, Wholesale & Department Store Union, A.F.L., C.I.O., C.L.C. (Respondent). (DISMISSED).

- and -

7482-63-R: Marion McCallum (Applicant) v. Retail, Wholesale & Department Store Union, A.F.L., C.I.O., C.L.C. (Respondent). (DISMISSED).

- and -

7483-63-R: Mildred Collins (Applicant) v. Retail, Wholesale & Department Store Union, A.F.L., C.I.O., C.L.C. (Respondent). (DISMISSED).

- and -

7486-63-R: Irene Barnes (Applicant) v. Retail, Wholesale & Department Store Union, A.F.L., C.I.O., C.L.C. (Respondent). (DISMISSED).

- and -

7491-63-R: Mrs. Donna Ruthven (Applicant) v. Retail, Wholesale & Department Store Union, A.F.L., C.I.O., C.L.C. (Respondent). (DISMISSED).

(Re: London Answering Service,
London, Ontario)

(10 employees involved in the above applications)

The Board endorsed each of the above applications as follows:

"The respondent was certified as bargaining agent of all employees of London Answering Service, at London, save and except supervisors, and persons above the rank of supervisor on the 23rd day of July, 1963.

This application for a declaration terminating the bargaining rights of the respondent was made on the 27th day of December, 1963.

Section 43(1) of The Labour Relations Act provides, inter alia, that if a trade union does not make a collective agreement with the employer within one year after its certification, any of the employees in the bargaining unit may apply to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit.

Since a year has not elapsed between the date of the certification and the date of the making of this application, this application is untimely.

In view of these circumstances and in accordance with the provisions of section 45 of the Board's Rules of Procedure, the Board is of the opinion that the applicant has failed to make a *prima facie* case for the remedy requested and the application is therefore dismissed."

APPLICATION FOR DECLARATION CONCERNING STATUS OF SUCCESSOR TRADE UNION DISPOSED OF DURING DECEMBER 1963

7113-63-R: United Steelworkers of America (Applicant) v. Shepherd Boats Limited (Niagara-on-the-Lake plant) (Respondent) v. Shepherd Boats Employees Association (Predecessor). (GRANTED).

The Board endorsed the Record in part as follows:

"The Board finds that the applicant is, by reason of a merger, the successor to Shepherd Boats Employees Association which was the bargaining agent for a unit of employees of the respondent defined in a collective agreement between Shepherd Boats Employees Association and Shepherd Boats Limited."

APPLICATION UNDER SECTION 79 DISPOSED OF DURING DECEMBER 1963

7079-63-M: The Corporation of the City of Sudbury (Applicant) v. The National Union of Public Service Employees (Respondent).

The Board endorsed the Record as follows:

"Application under section 79(2) of The Labour Relations Act.

The Board notes the agreement of the parties that the chief field inspector is excluded from the bargaining unit and that the applicant has withdrawn its application with respect to the I.B.M. supervisor, the chief accountant, the chief tax collector and the city engineer's secretary.

The Board is therefore called upon to determine the status of only two persons, namely, the director of recreation (Miss Diana Heit) and the assistant director of recreation and supervisor of athletics (R. A. Kleven). We find that Miss Heit exercises managerial functions and is therefore not an employee of the applicant for the purposes of The Labour Relations Act. We find further that Mr. Kleven, having regard to his duties and responsibilities at this time, does not exercise managerial functions and that he is therefore an employee of the applicant for the purposes of The Labour Relations Act."

Board Member M. C. Hay said:

"On the basis of the Examiner's report, I find that Mr. Kleven performs a parallel function to Miss Heit and Mr. Bateman and as such exercises managerial functions and is not an employee for the purposes of The Labour Relations Act."

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING DECEMBER 1963

7105-63-U: The Hydro-Electric Power Commission of Ontario (Applicant) v. United Brotherhood of Carpenters and Joiners of America and United Brotherhood of Carpenters and Joiners of America, Millwrights Local 1592 (Respondents). (DISMISSED).

7228-63-U: The Hydro-Electric Power Commission of Ontario (Applicant) v. United Brotherhood of Carpenters and Joiners of America, Millwrights Local 1592 (Respondent). (GRANTED).

The Board endorsed the Record as follows:

"The Board hereby consents to the institution of a prosecution against the respondent for the following offence alleged to have been committed:-

That contrary to Section 55 of The Labour Relations Act the respondent did, between on or about the 2nd day of October, 1963 and on or about the 7th day of October, 1963, call or authorize an unlawful strike by certain employees of the applicant at its Douglas Point Project, in the County of Bruce.

The appropriate document of consent will issue."

7274-63-U: The Hydro-Electric Power Commission of Ontario (Applicant) v. Douglas Wayne Bannerman (Respondent). (GRANTED).

The Board endorsed the Record as follows:

"The Board consents to the institution of a prosecution against 7 named persons, herein-after called the respondents, for the following offence alleged to have been committed:

That contrary to sections 54(1) and 69 of The Labour Relations Act, the respondents, being bound by a collective agreement, did, on November 7th, 1963, engage in a strike by stopping work, without authorization or the consent of their employer during their regularly scheduled working hours and by failing to return to work.

The appropriate document of consent will issue."

Board Member D. M. Storey dissented and said:

"I dissent, having regard to all the circumstances of the case I would have dismissed the application."

7275-63-U: The Hydro-Electric Power Commission of Ontario (Applicant) v. G.T. Harman et al (Respondents). (GRANTED).

The Board endorsed the Record as follows:

"The Board hereby consents to the institution of a prosecution against 3 named persons for the following offence alleged to have been committed:

That contrary to section 54(1) of The Labour Relations Act the respondents and each of them, who were employees of the applicant, The Hydro-Electric Power Commission of Ontario, did, on or about the 2nd day of October, 1963 engage in an unlawful strike at the job site of the applicant at its Point Douglas Project in the County of Bruce.

The appropriate documents of consent will issue."

7281-63-U: The Hydro-Electric Power Commission of Ontario (Applicant) v. D. Colvin (Respondent). (GRANTED IN PART, WITHDRAWN IN PART).

APPLICATIONS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING DECEMBER 1963

7116-63-U: United Glass and Ceramic Workers of North America (Complainant) v. A.P. Green Fire Brick Co. Ltd. (Respondent).

7122-63-U: Henry Shepherd (Complainant) v. Jiger Corporation Ltd. (Respondent).

The Board endorsed the Record as follows:

"On the basis of the evidence before it, the Board is satisfied that Henry Shepherd, whose employment with the respondent was terminated on the 20th day of September, 1963, was discharged by the respondent contrary to The Labour Relations Act.

While Henry Shepherd was still unemployed at the time of the hearing in this matter, we are also satisfied that he made reasonable efforts to find employment by which to mitigate his loss of earnings. In the circumstances of this case, we assess his compensation for his loss of earnings, up to and including the date of our decision herein, at \$395.00.

Accordingly, the Board directs as follows:

- (a) that the respondent shall forthwith reinstate Henry Shepherd in his employment in the same position in which he was employed by the respondent at the time of his discharge; and
- (b) that the respondent shall forthwith pay to Henry Shepherd the sum of \$395.00."

7126-63-U: Lumber and Sawmill Workers' Union, Local 2537 of the United Brotherhood of Carpenters and Joiners of America (Complainant) v. Gerard Gauthier (Sultan) (Respondent).

7147-63-U: Food Handlers' Local Union 175, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO (Applicant) v. George L.J. Trottier, carrying on business under the firm name and style of Delhi I.G.A. Food Market (Respondent).

The Board endorsed the Record as follows:

"This is a complaint for relief under section 65 of The Labour Relations Act.

The complainant alleges that the respondent did on October 19th, 1963, reduce the working hours of the aggrieved persons Annie Lewis from a normal forty-two hour week to part-time employment of twenty-four hours per week or less, in contravention of the provisions of section 50 of The Labour Relations Act.

The respondent alleges that it was necessary to reduce the working hours of one full-time cashier because of a drop in sales volume which resulted in his wage costs being higher than normal in relation to his gross sales. The hours of work of Annie Lewis were reduced because she was the least efficient of the three full-time cashiers.

The Board does not propose to make a detailed review of the evidence adduced at the hearing in Delhi on December 5th, 1963. In the light of all the evidence, however, the Board is of the opinion that Annie Lewis was by no means the least efficient

of the three full-time cashiers. It is clear that she had more experience, seniority and responsibility than the other two cashiers. Moreover, we find no substance in the specific allegations of her shortcomings in carrying out her duties. The fact that she is still largely responsible for the functions at which she is alleged to lack competence, even while working reduced hours, seems to confirm our assessment of the evidence with respect to her job efficiency.

We further find that the evidence fails to substantiate the allegation that wage costs had risen above acceptable limits in relation to gross sales. Even if we accept the respondent's premise, having regard to the fact that part-time cashiers are required to work hours no longer worked by Annie Lewis, we fail to appreciate that there can be any appreciable reduction in payroll costs. We note that Ronald Brown, the store manager, was unable to give any explanation as to why the part-time help was not further reduced in order to maintain the full-time services of Annie Lewis, and the Board is less than satisfied with the explanation provided by Trottier.

There is an almost complete conflict in the evidence of Annie Lewis and that of Brown as to the conversations that took place between them on October 19th, the date on which Brown informed her of the reduction in her hours of work. There is similarly an almost total conflict in the evidence of Annie Lewis and Trottier as to the conversation that occurred between them on October 22nd.

In reviewing the evidence of Brown and Trottier, the Board finds that their testimony fails to substantiate the allegations which they both made with respect to Annie Lewis. We find, further, inconsistencies in each of their testimony. We also find conflicts between the evidence of Brown and Trottier, on the one hand, and that of Betty Glendenning on the other hand, particularly as it relates to the job performance of Annie Lewis. With respect to these conflicts, the Board is prepared to accept the evidence of Betty Glendenning.

Upon considering the evidence of Brown and Trottier and their demeanour on the witness stand,

and the testimony and demeanour of Annie Lewis, the Board accepts the evidence of Annie Lewis, particularly as it relates to the conversations with Trottier on October 22nd. In view of the circumstances surrounding this complaint as revealed in the evidence, we cannot accept Trottier's statement that he did not know that Annie Lewis was a member of the complainant union until the Board's hearing on December 5th.

The Board is satisfied that the respondent reduced the working hours of Annie Lewis in contravention of section 50 of The Labour Relations Act.

At the time of the reduction in her working hours, Annie Lewis was earning \$52.00 per week, and since the reduction in her working hours she has been earning \$30.00 per week.

Our determination of the action to be taken by the respondent is as follows:-

- (a) The respondent shall forthwith reinstate Annie Lewis as a full-time cashier in the same or like employment as before the reduction in her hours, and her working hours shall be the same or like working hours as before the reduction.
- (b) As compensation for her loss of wages and employment benefits from October 21st to and including December 5th, the respondent shall forthwith pay to Annie Lewis the sum of \$146.66.
- (c) The respondent and the complainant shall meet forthwith with a view to agreeing on the amount of loss of earnings and employment benefits, if any, now sustained or which may hereafter be sustained by Annie Lewis between the date of the hearing on December 5th and the date of her actual employment on a full-time basis by the respondent. In default of an agreement between the parties within 7 days after the release of this determination or within such further period as the parties may mutually agree upon, the amount of any such further compensation payable, if any, will be determined by the Board upon the motion of either party for a further hearing for that purpose."

7272-63-U: United Electrical, Radio and Machine Workers of America (UE) (Complainant) v. General Freezer Ltd. (Respondent).

The Board endorsed the Record as follows:

"In view of the offer of settlement made by the respondent company, we are of opinion that the Board should not inquire further into the complaint at this stage by means of a hearing by the Board.

The complaint is accordingly dismissed, but without prejudice to the right of the complainant or the aggrieved person to file another complaint if the aggrieved person is not recalled in accordance with the assurances given to the Field Officer."

7273-63-U: Brotherhood of Painters, Decorators and Paper-hangers of America, Glaziers Local 1819 (Complainant) v. Advance Glass & Mirror Ltd. (Respondent).

7280-63-U: R.L. Spurgeon, Jr. (Complainant) v. Silverwood Dairies Ltd. (Respondent).

7306-63-U: Fur Workers' Union, Local 82, affiliated with the Amalgamated Meat Cutters & Butcher Workmen of North America (Complainant) v. William Lech and Sons Limited (Respondent).

7307-63-U: International Association of Machinists (Complainant) v. Vertol Div. Boeing Canada Ltd. (Respondent).

The Board endorsed the Record as follows:

"This is a complaint for relief under section 65 of The Labour Relations Act.

On the evidence, the complainant has failed to satisfy us that the respondent acted in contravention of subsection (a) of section 50 of The Labour Relations Act in discharging the aggrieved person R. J. Soikie on November 15th, 1963."

7315-63-U: Retail Clerks International Ass'n (Complainant) v. Sentry Department Stores Ltd. (Respondent).

7358-63-U: United Brotherhood of Carpenters & Joiners of America (Complainant) v. Fraser - Brace Engineering Company Limited (Respondent).

7437-63-U: Frederick Lewis (Complainant) v. International Stereotypers' and Electrotypers' Union of North America (Respondent).

CERTIFICATION INDEXED ENDORSEMENTS

6478-63-R: United Steelworkers of America (Applicant) v. Rosco Metal Products Limited (Respondent). (GRANTED DECEMBER 1963).

The Board endorsed the Record as follows:

"The Board, in its decision dated September 16th, 1963, directed the taking of a representation vote of the employees of the respondent in the bargaining unit which it determined in the same decision. The vote was held on October 15th, 1963. On October 24th, a statement of objections to the vote and desire to make representations was filed with the Board on behalf of a group of employees. It appears that the group of employees who filed the statement of objections is the same group of employees who filed documents in opposition to the union's application for certification and who were represented at the two hearings before the Board on July 15th and August 20th, 1963. A hearing on the objections of the group of employees was held on November 7th, 1963.

The agreed facts upon which the objections are based are as follows. Three employees, representing the group of employees, presented themselves at the three appointed polling stations at the commencement of the vote on the morning of October 15th to act as scrutineers. The Returning Officer or his Deputy at two of the polling stations refused to allow two employees to act as scrutineers. The third employee was allowed to remain in one of the polling stations during the taking of the vote. None of the three were permitted to be in attendance at the counting of the ballots or during the determination of the revised voters' list.

Counsel for the group of employees submits that

since the group of employees were denied the right to have scrutineers representing them during the taking of the representation vote and at the counting of the ballots, the Board should direct a new representation vote.

The principle that has been applied by the courts in cases involving disputed elections is that when an election is conducted in a manner which is substantially fair, any mistake or irregularity which does not affect the result will not invalidate the election. (Re Murray and Portage La Prairie, 14 W.W.R. (N.S.) 553, 63 Man. R. 84, (1955) 5 D.L.R. 282; Re Monk; Grant v. McCallum (1876) Hodg. 725, 12 C.L.J. 113; Regina ex rel. Preston v. Touchburn 6 P.R. 344). We are of the opinion that the same principle should govern vote proceedings conducted by the Board. Let us assume, for purposes of argument, that the group of employees should have been permitted to be represented by scrutineers during the representation vote. Having regard to the above principle, should a new vote be directed in the instant case?

In support of its submission, counsel for the group of employees argues that turning the scrutineers away from two of the three polling stations in the presence of other employees, and the absence of the scrutineers in two of the polling stations during the taking of the vote could, and probably did influence many of the employees who cast ballots. There is no evidence before us as to the number of employees who witnessed the two scrutineers being turned away at the polling stations, or whether those employees who were present were aware that the Returning Officer or his Deputy had not permitted the two employees in question to remain and act as scrutineers for the group of employees. Let us assume, for the purposes of argument, however, that a substantial number of employees were present and were aware of the circumstances. On the evidence we are satisfied that neither the turning away of the scrutineers nor their absence from the polling stations influenced any of the employees in such a way as to affect the result of the representation vote.

Counsel for the group of employees argues that by not permitting two of the scrutineers for the group of employees to be present in the polling

stations during the taking of the vote, they did not have an opportunity to "bring out" the vote. That is to say they were not able to ascertain which employees had not voted so that they could contact them and urge them to cast their ballots. It was argued that since two of the polling stations were open for half an hour in the evening as well as in the morning, such activity was possible. The Report of the Returning Officer shows that all employees in the bargaining unit who were at work on the day of the vote did, in fact, vote. Even if through the efforts of the group of employees the 13 employees who were absent on that day (and whose names were struck off the voters' list in accordance with section 7 subsection (4) of The Labour Relations Act) had come to the plant and cast their ballots in opposition to the union, the majority of those eligible to vote who cast their ballot would still be in favour of the union.

Counsel for the group of employees argues that by not permitting scrutineers for the group of employees to attend the counting of the ballots, they had no way of ascertaining the regularity of this procedure. Scrutineers representing the union and the company were in attendance during the counting of the ballots and signed a statement as to the regularity of the balloting. No allegations of irregularities were made by either party, and counsel for the group of employees did not produce any evidence of irregularity in the balloting. In these circumstances, the Board is satisfied that the ballot count was properly conducted and accurately tabulated.

Counsel for the group of employees argues that by not allowing the group of employees to be represented by scrutineers, they had no knowledge as to the basis for the removal of names from the voters' list after the taking of the representation vote. The Board notes that a copy of the Report of the Returning Officer dated October 15th, 1963 was forwarded to counsel for the group of employees as well as to a representative of the group. Attached to the report are Appendices "A", "B" and "C". Appendix "A" lists the names of 13 employees which were removed from the original voters' list by the Returning Officer in accordance with section 7 subsection (4) of The Labour Relations Act; that is, employees who were absent from work during voting hours and who did not cast ballots. Appendix "B" lists the

names of 19 persons whose names were removed by the Returning Officer in accordance with the Board's direction of September 16th; that is, employees who had terminated their employment, were laid-off, or, in one case, retired between the date the vote was directed and the date on which the vote was held. Appendix "C" list the names of 6 employees whose ballots the Board had directed to be segregated. Neither the applicant, the respondent nor the group of employees have made any specific objection to the removal from the voters' list of any of the names appearing on Appendix "A" or "B". We would add that one of the objects of serving a copy of the Report of the Returning Officer on the group of employees is to afford them an opportunity to examine the revised voters' list and make objections. The Board accordingly finds that although the group of employees were not represented when the Returning Officer struck these names off the voters' list, it shortly thereafter had full knowledge of the names of these persons who had been removed from the list and the basis for their removal.

Counsel for the group of employees argues that the Board has no authority to remove any names from the voters' list after the list has been settled prior to the taking of the representation vote. In so far as names were struck off the voters' list in accordance with the Board's direction of September 16th,* it is obvious that the names of those persons who have ceased to have an interest in the outcome or who would not be affected by the result of the vote ought to be removed from the voters' list in order to arrive at the base figure from which the Board can determine the number which constitutes a majority of employees in the bargaining unit. As for the removal of names from the voters' list in accordance with section 7 subsection (4), this was done in pursuance of The Labour Relations Act. We accordingly fail to appreciate any basis for, or merit in this argument. We note that even if all of the 32 persons whose names were removed from the voters' list had cast ballots against the union, the total ballots cast against the union would only be 141 as opposed to 161 ballots in its favour. Even if the 6 segregated ballots were cast against that union, the outcome of the vote would not be affected. (Accordingly, it is not necessary for the Board to make a determination on the segregated ballots). In other words, even placing the group of employees in its best possible position, the union would still have a clear majority in its favour.

The Board is satisfied that the representation vote was fair in all respects and that the result represents a true expression of the wishes of the majority of the employees in the bargaining unit. In our opinion, to direct a new representation vote at this time would be to thwart the abundantly clear wishes of the majority of the employees in the bargaining unit. The Board accordingly is not prepared to direct a new representation vote."

*The Board's direction read as follows: "All employees of the respondent in the bargaining unit on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken will be eligible to vote."

6701-63-R: The Canadian Union of Operating Engineers (on behalf of its Local 104) (Applicant) v. B. F. Goodrich Canada Limited (Respondent) v. United Rubber, Cork, Linoleum and Plastic Workers of America, Local 677 (Intervener).
(DISMISSED DECEMBER 1963).

The Board endorsed the Record as follows:

"The applicant is seeking to carve out a bargaining unit of stationary engineers from an "all employee" unit at the respondent's plant at 131 Goodrich Drive in Kitchener, hereinafter referred to as the "new plant", which commenced to operate on or about the 1st day of October, 1962. At the time the application was made, the employees at the new plant were bound by a collective agreement between the respondent company, on the one hand, and United Rubber, Cork, Linoleum and Plastic Workers of America, hereinafter referred to as the "International Union", and the present intervener, Local 677 of the International Union, hereinafter referred to as the "new local union", on the other hand, effective from October 1st, 1962, until September 30th, 1963. The intervener and the respondent oppose the application and request the Board to exercise its discretion under subsection 2 of section 6 of The Labour Relations Act and not apply the mandatory part of this subsection to the circumstances of this case.

The circumstances are as follows: the respondent operates another plant at 521 King Street West in

Kitchener, hereinafter referred to as the "old plant", and transferred certain of its operations and working force from there to the new plant. In contemplation of the opening of the new plant the respondent, between December, 1961, and February, 1962, hired four additional stationary engineers and, during the transitional period preceding the opening of the new plant, the nine stationary engineers in the employ of the respondent were rotated between the boiler rooms of the two plants. Upon the opening of the new plant, the stationary engineers were given the opportunity, on the basis of seniority, to transfer to its boiler room. In fact, one stationary engineer from the regular staff of the old plant did transfer to the new plant while 95 per cent of the production workers at the new plant were transferred to it from the old plant.

Since 1948 the collective bargaining relationship of the employees at the old plant, including the five stationary engineers normally employed in its boiler room, has been governed by collective agreements between the respondent company, on the one hand, and the International Union and Local 73 of the International Union, on the other hand. On or about the 1st day of June, 1962, and prior to the opening of the new plant, the respondent entered into an agreement with the International Union and Local 73 by which the respondent recognized the International Union as the bargaining agent of the employees at the new plant and the International Union agreed to charter a new local union which would be a party to any collective agreement between the respondent and the International Union. The provisions of the existing agreement for the old plant, with certain amendments, were applied to the employees at the new plant until the 1st day of October, 1962, at which time the collective agreement, referred to in paragraph 2 above, between the respondent, the International Union and the new local union became effective. This agreement in turn provided for the wage rates and hours of work of the power house engineers. The parties are now negotiating the terms of a new collective agreement and the requests of the stationary engineers have been ascertained and are being negotiated.

On or about May 22nd, 1962, the present applicant made an application for certification as bargaining

agent of the stationary engineers of the respondent at the old plant (File No. 3802-62-R). The division of the Board which dealt with that application, in its decision dated July 20th, 1962, O.L.R.B. Monthly Report, July, 1962, page 133, declared that, in view of the history of collective bargaining there, a unit of stationary engineers at that plant would not be appropriate.

While counsel for the intervener admits that the new local union is a newly-formed trade union with its first collective agreement with the respondent, he submits that there is here a "continuity of employer-employee relationship" as a result of the transfer of employees from the old plant, that the intervener and the respondent have had a continuous relationship since 1948 with respect to such employees, and that the Board has already determined that the intervener has adequately represented the stationary engineers during this long-standing relationship. He asks, therefore, that the application be dismissed. Counsel for the respondent concurs in the submissions made on behalf of the intervener and also asks that the application be dismissed. The applicant says that there is no history of collective bargaining between the new local union and the respondent with respect to the new plant and that the stationary engineers at the new plant have been deprived of the opportunity to representation by a trade union of their own choice.

The situation with which we have to deal is that the respondent company, for the purposes of redistributing its existing undertakings, transferred a substantial part thereof, together with the work force involved, to a new plant acquired in the same municipality for that purpose. In so doing, no material change was wrought in the nature and extent of its undertakings or in the structure of its work force. While the respondent hired 4 additional stationary engineers, they were not hired exclusively for the new plant but, to all intents and purposes, were added to the boiler room staff at the old plant and, accordingly, were included in the established "all employee" unit there.

The issue for the Board is whether or not a bargaining unit composed of the stationary engineers at the new plant is appropriate for collective bargaining. The answer depends, in part, on whether the incumbent bargaining agent for the established industrial unit at the new plant has a history of collective bargaining. Having in mind that: (1) the employees at the new plant, including the stationary engineers, were transferred to it from the old plant where, since 1948, they had been represented for collective bargaining purposes by the International Union and its Local 73; (2) that the respondent, in carrying out the transfer, recognized the International Union as the bargaining agent of such employees during the transitional period; and (3) that, once the new plant came into operation, these employees were bound by a collective agreement signed by the International Union and the new local chartered by it for that purpose, we are satisfied that the International Union was, prior to the transfer, and has continued to be since the transfer, the bargaining agent of the employees at the new plant.

The International Union's history of collective bargaining for the employees at the old plant dates back to 1948 but we have to determine whether that history applies equally to the employees at the new plant in the circumstances of this case. If an employer transfers its complete undertakings and staff from one plant to another in the same municipality, we do not think that it could be argued seriously that an incumbent bargaining agent thereby loses its bargaining rights with respect to the employees in that established bargaining unit. Nor do we think that such incumbent bargaining agent could be said to have lost its history of collective bargaining with respect to those employees at their new work site. In our opinion, the same result follows where, as in this case, the transfer affects only a segment of the original bargaining unit. Accordingly, we can only conclude that the International Union, in the circumstances of this case, retains its history of collective bargaining with respect to the employees of the respondent at the new plant, a history that does not differ in any material respect from that which still exists with respect to the employees who were retained at the old plant.

Having regard to this history of collective bargaining the Board has already declared, in respect of the old plant, that a bargaining unit of stationary engineers is not an appropriate unit. We are of opinion that, for the same reason, such a unit is not appropriate in the case of the new plant.

There remains for consideration the submission of the applicant that the stationary engineers at the new plant were deprived of the opportunity to select a trade union of their choice. A similar submission was considered earlier by this Board in the Canada Foundries and Forgings Limited Case, (1961) C.C.H. Canadian Labour Law Reports, '16,203; C.L.S. 76-753, and the situations in the two cases do not differ in any material respect. For the reasons given by the Board in its decision in that case, we are unable to conclude, on the basis of this submission, that the unit sought by the applicant is appropriate for collective bargaining.

The application is therefore dismissed."

7160-63-R: United Steelworkers of America (Applicant) v. Picton Garage Company Limited (Respondent) v. General Truck Drivers' Union, Local 879 (Intervener). (GRANTED DECEMBER 1963).

The Board endorsed the Record in part as follows:

"In September, 1955, the intervener was certified as the collective bargaining agent for the employees affected by the instant application. In December, 1957, a request to this Board for conciliation services was granted and the matter was referred to the Minister of Labour. On January 28th, 1958, the Deputy Minister was advised by the Chief Conciliation Officer, that a collective agreement had been effected between the parties and on that basis the Minister's file was closed. When this application for certification came on for hearing, the representative for the intervener contended that the application must be dismissed as untimely under section 46(2) of The Labour Relations Act.

The intervener and respondent have informed the Board, however, that they have no knowledge or record of the making of any collective agreement in or since the year 1958 or of anything done by the intervener since January, 1958, to indicate or to assert its bargaining rights. The inference is, therefore, inescapable that, in the interval from January, 1958, to after the date of the making of this present application on October 30th, 1963, a period of almost six years, the intervener has "slept on

its rights" and done nothing whatever to assert them. As no qualifying circumstances have been suggested which could be said to indicate a reason for the intervener's inactivity in asserting its bargaining rights during this extended period of time, the intervener must be taken to have abandoned them. (See The Fisher Bread Co. Ltd. case, Board file 6616-63-R; National Hardware Specialties Limited case, Board file 4416-62-R; The Coca-Cola Ltd. case, Board file 4386-62-R; Guelph Cartage Company case, C.C.H. Canadian Labour Law Reporter, 1955-59 Transfer Binder, ¶16,018; Halliday Fuels Limited case, ibid., ¶16,021; Canada Sand Paper Ltd. case, ibid., ¶16,111.) In consequence the intervener's argument based on section 46 (2) must fail."

7242-63-R: United Brotherhood of Carpenters and Joiners of America, Local 2480 (Applicant) v. P.R. Connolly Construction Limited (Respondent). (GRANTED DECEMBER 1963).

The Board endorsed the Record in part as follows:

"The applicant requested and the Board directed a hearing the purpose of which was to consider the appropriate geographic area in the description of the bargaining unit. The Board indicated to the parties that it was prepared to entertain submissions that it reconsider its previous practice of granting portions only of Simcoe County. The Board also invited 17 trade unions (internationals and locals thereof) and six employer associations to attend and make submissions. Apart from the parties, two trade unions and two employer associations availed themselves of this opportunity. The Board is pleased to acknowledge the contributions made to the proceedings by all persons who appeared before it.

The evidence establishes to our satisfaction that the applicant union now bargains for and signs collective agreements on behalf of carpenters in the County of Simcoe. The evidence further establishes that the current pattern of collective bargaining for both resident and non-resident contractors with the applicant is the County of Simcoe. Thus, the objections raised by the Board in M. Sule Construction Limited, O.L.R.B. Monthly Report,

November, 1962, p. 251, and Ball Brothers Limited, O.L.R.B. Monthly Report, January, 1963, p. 432, have been overcome. Furthermore, since those cases, the Board has recognized that the County of Simcoe is an appropriate geographic area. See E. S. Fox Plumbing & Heating Limited, O.L.R.B. Monthly Report, July, 1963, p. 198. The evidence in the present case with respect to location and distribution of membership and existing patterns of bargaining tends to confirm this conclusion.

The burden of the general submissions made to the Board by the employers was to the effect that areas should be confined within narrow limits, that the concept of the labour market area should be utilized in defining those limits, and that extensions of those limits should be a matter of collective bargaining between the parties. The fact is that the Board has to some extent followed these principles in areas where there is no evidence of collective bargaining patterns. See, for example, Foundation Company of Canada Limited, O.L.R.B. Monthly Report, March, 1963, p. 532, where the Board granted an area consisting of Sault Ste. Marie and a number of surrounding townships; and in the same report at p. 503, Tru-Line Construction Ltd., where the area granted was the Township of Mountjoy and the townships immediately adjacent thereto. However, where there exists an established pattern of collective bargaining the Board has up to the present rejected these principles.

In any event if the concept of a local labour market is a material factor to be considered by the Board in determining what is an appropriate geographic area, the Board would have to have before it a good deal more evidence than it has in the present case. In reality we have little more than a definition, that is, an area within which there is a resident pool of labour offering its services continuously and principally in the local labour market. There is little evidence to show what would constitute a local labour market or markets as defined in the area here under consideration. In fact such evidence as exists, namely, that respecting location

of members, registration of members at a number of different National Employment Service offices and the travelling habits of the construction tradesmen in the area, clearly points up the difficulty of defining an appropriate local labour market. Moreover, these are only some of the factors which would have to be considered. Thus for example it seems to us that recognition would have to be given to the fact that one of the current collective bargaining practices is to provide for different rates and conditions for an area within the framework of a single agreement. In fact this is the case in the current agreements which the applicant union has for the County of Simcoe.

In the result and having regard to the above considerations, we are agreed that the appropriate geographic area in this case is the County of Simcoe."

6596-63-R: International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local 938, General Truck Drivers (Applicant) v. Armstrong Transport (Respondent). (DISMISSED DECEMBER 1963).

On August 20, 1963 the Board endorsed the Record in part as follows:

"The applicant filed an application for certification with the Board dated July 17th, 1963. The respondent in its reply to the application submitted that the Board had no jurisdiction with respect to the application in the following language:

Please be notified that the Respondent Company submits that the Ontario Labour Relations Board has no jurisdiction in this matter. The Respondent Company further states that it is engaged in the transport of goods within Ontario and from Ontario to destinations in other provinces and jurisdictions. The Respondent Company further states that the transport of goods from Ontario to points outside of Ontario is both continuous and regular. The Respondent Company further states that is an undertaking excluded by Section 92 (10) (a)

of the British North America Act, from the jurisdiction of the province and that it falls within the exclusive authority of Parliament under Section 91 (29) of the said Act. The Respondent Company therefore states that the Ontario Labour Relations Board has no jurisdiction with respect to the labour relations of the Respondent Company and that the competent authority is the Canada Labour Relations Board. The Respondent Company, however states that its operation or undertaking is governed by the principles enunciated in the case of Regina vs Toronto Magistrates, Ex Parte Tank Truck Transport Limited 1960 O.R. 497.

At the hearing before the Board on August 8th, 1963, counsel for the respondent, relying on a recent decision of the Ontario Court of Appeal in Regina v. Ontario Labour Relations Board, Ex parte Ontario Food Terminal Board (1963) 2 O.R. 91, argued that the Board was not competent to entertain a constitutional issue. In our view if the Board accepts the argument of counsel for the respondent, in every instance when a question of jurisdiction is raised, be it frivolous or of substance, the proceeding immediately would be stayed. The practical result would be to seriously impede the Board in the exercise of its powers under The Labour Relations Act. Should a party to an application raise a jurisdictional issue and then fail to proceed to a court of law for a determination of the issue, the result would be a lengthy or even indefinite delay in the disposition of the application. In a more recent decision, the Northern Electric Company Limited Case (S.C.O. April 23, 1963 - not reported), however, McRuer C.J.H.C. held that although the Board cannot judicially determine constitutional questions, it has power to entertain an objection to its jurisdiction on constitutional grounds and to have the grounds of the objection stated. On our reading of the Ontario Food Terminal Board Case (supra) in conjunction with the Northern Electric Company Limited Case (supra) the Board finds that it is competent to entertain the objection to its jurisdiction on the constitutional issue raised by the respondent and to have the grounds of the objection stated.

On October 1, 1963 the Board further endorsed the Record as follows:

"The applicant and the respondent agree on the following facts with respect to the respondent's operation. The respondent company operates a trucking business. For many years it has had a yearly contract with Office Specialties Limited in Newmarket to haul its products to various locations in Ontario and to jurisdictions outside of Ontario. The respondent owns transport vehicles, fourteen of which are registered in the name of Office Specialties Limited. The remaining three vehicles are registered in the name of the respondent and the respondent holds licences for them from Ontario under the Public Commercial Vehicles Act for intra-provincial haulage. Neither the respondent nor Office Specialties Limited hold P.C.V. licences for any of the seventeen trucks registered in the name of the latter company. The respondent largely hauls the products of Office Specialties Limited, but it does have contracts to haul goods and materials for other companies. Three of the vehicles which are registered in the name of Office Specialties Limited regularly haul a total of four loads of Office Specialties products each week to its branch premises in Montreal. The vehicles return without a load from Montreal to Newmarket. The same three trucks have motor vehicle permits for the Province of Quebec which are registered in the name of Office Specialties Limited. Two of the fifteen drivers in the employ of the respondent regularly drive the Montreal route, although there is some interchange of drivers.

The respondent submits that the Board has no jurisdiction with respect to its operation. In support of its submission the respondent states that it is engaged in the transport of goods within Ontario and from Ontario to destinations in other provinces and jurisdictions. Moreover, the transport of goods from Ontario to the Province of Quebec is both continuous and regular. The respondent argues that it is engaged in an undertaking excluded by section 92(10)(a) of the British North America Act from the jurisdiction of the Province of Ontario and that it falls within

the exclusive authority of the Parliament of Canada under section 91(29) of the said Act. The respondent takes the position that the Board accordingly has no jurisdiction with respect to its labour relations and that the competent authority is the Canada Labour Relations Board. The respondent states that its operation or undertaking is governed by the principles enunciated in Regina v. Toronto Magistrates, Ex Parte Tank Truck Transport Limited (1960) O.R. 497.

The applicant submits that the operations of the respondent do not fall within the exceptions of section 92(10)(a) of the British North America Act. In support of its submission the applicant argues that the respondent has no P.C.V. licence to operate inter-provincially but rather is only licenced for intra-provincial haulage. The applicant states that regardless of whether or not the respondent owns the transport vehicles used in its inter-provincial operations, these vehicles are registered in the name of Office Specialties Limited. Having regard to the nature of the relationship between the respondent and Office Specialties Limited, the applicant argues that in the transporting of the products of the latter company to its branch premises in Montreal, the respondent is not a common carrier. This being the case the principles set out in Regina v. Toronto Magistrates, Ex Parte Tank Truck Transport Limited (supra) do not apply in the instant case. Accordingly the applicant argues that the respondent's operations fall within the jurisdiction of the Ontario Labour Relations Board.

REQUEST FOR RECONSIDERATION IN CERTIFICATION APPLICATION
49-50: London and District Building Service Workers, Local 220, A.F. of L. (Applicant) v. Victoria Hospital (London) (Respondent). (DISMISSED FEBRUARY 1951).

On December 31, 1963 the Board further endorsed the Record as follows:

"Application for reconsideration by the Board of its decision of February 19, 1951, in this matter.

Since the Board of Hospital Trustees of the City of London and the Corporation of the City of London appear to have declared, under section 78 of The Labour Relations Act, Statutes of Ontario, 1950, c. 34 (now section 89 of R.S.O. 1960, c. 202) that The Labour Relations Act shall not apply to them in their relations with the employees concerned in this application, the Board is without jurisdiction to entertain the application for reconsideration.

However, even if the Board did have jurisdiction, we feel impelled to point out that, in view of the time that has elapsed since the date (February 19, 1951) when the Board's decision in this case was issued, and the further fact that the change in conditions, on the basis of which this request for reconsideration is made, occurred long after that decision was issued, the Board would not deem it advisable to reconsider its decision of February 19, 1951 in this matter.

Whatever relief, if any, the Board of Hospital Trustees of the City of London might be entitled to in the situation outlined in its request for reconsideration, such relief cannot be granted to it by way of reconsideration by the Board of its decision of February 19, 1951."

REQUEST FOR RECONSIDERATION IN CERTIFICATION APPLICATION

5657-62-R: International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers Local 419, Warehousemen and Miscellaneous Drivers (Applicant) v. Federal Farms Limited (Respondent). (GRANTED OCTOBER 1963).

On December 18, 1963 the Board further endorsed the Record as follows:

"The respondent by letter dated November 11th, 1963 requests that the Board reconsider or revoke its decision of October 8th, 1963 and its subsequent certificate dated October 17th, 1963 whereby the Board certified the applicant union as bargaining agent for certain employees of the respondent company.

The respondent alleges that "the Board erred in law in accepting the fact that it had the power to make a determination as to whether or not it had jurisdiction to deal with the application". The respondent at no time during the hearing on this application challenged the Board's competence to make a determination as to its jurisdiction and has submitted no argument in support of its allegation. In any event, the Board directs the attention of the parties to two recent judgments of the Supreme Court of Ontario, namely the decision of McRuer, C.J.H.C. in The International Nickel Company of Canada Case (November 4th, 1963) and the decision of Haines, J. in the Armstrong Transport Case (November 30th, 1963).

The respondent alleges that the Board erred in law in finding that it had jurisdiction with respect to the application by finding that certain employees for whom the applicant was seeking certification were persons not employed in agriculture or horticulture within the meaning of section 2(b) or 2(c) respectively of The Labour Relations Act. The parties were given the opportunity and did in fact fully argue these issues as is apparent from the Board's decision of October 8th. Moreover, the respondent has not indicated that any new evidence exists or if it exists that it could not have been adduced at the time of the prior hearing. The Board, accordingly, has no basis upon which to reconsider its findings.

The respondent alleges that substantial changes have taken place in the personnel of the bargaining unit determined by the Board in the time that has elapsed between the date of the making of the application and the date of the Board's decision. The respondent argues that the Board should give weight to these changes prior to certifying the applicant without the taking of a representation vote. This issue was raised in Regina v. Ontario Labour Relations Board, ex parte Underwater Gas Developers Limited (1960) O.W.N. 53. In his reasons for judgment dismissing the application for an order in lieu of certiorari, Smily, J. noted that there would never be any finality to

applications before the Board if it had to make a further examination into the personnel of the bargaining unit every time there was any delay in arriving at a decision. We would make reference also to subsection (1) of section 7 of The Labour Relations Act (as amended by the Statutes of Ontario 1960, c.54 s.4(1) which provides that the Board shall ascertain the number of employees in the bargaining unit at the time the application was made and the number of employees in the unit who were members of the trade union at such times. (See also the DuPont of Canada Limited Case, OLRB Monthly Report, February, 1962, p.404).

In light of the foregoing, the Board does not consider it advisable to reconsider its decision of October 8th, 1963."

REQUEST FOR RECONSIDERATION OF CERTIFICATION APPLICATION
DISPOSED OF BY THE BOARD

6615-63-R: Oshawa Typographical Union (I.T.U.) Local 969 (Applicant) v. General Printers Limited (Respondent) v. Amalgamated Lithographers of America, Local 12 (Intervener). (GRANTED SEPTEMBER 1963).

On December 19, 1963 the Board further endorsed the Record as follows:

"The Board in its decision dated September 19th, 1963 certified the applicant as bargaining agent for all employees of the respondent at Oshawa engaged in composing room work, with certain exceptions not here material.

We have considered the representations of counsel for the respondent made at a hearing of the Board on December 9th, in support of his request that we reconsider and revoke our decision of September 19th, on the grounds that the evidence of membership filed by the applicant does not meet the Board's requirements. We have also given consideration to the representations of counsel for the applicant in reply to the request.

In certifying the applicant in its decision of September 19th, the Board accepted as evidence of membership the authorization cards and accompanying receipts filed by the applicant. Each employee who signed an authorization card designated and authorized the delegated representative or representatives of the applicant to represent him in all negotiations for the purpose of collective bargaining with his employer for wages, hours and working conditions. The accompanying receipt in each case, which is signed by an officer of the union and counter-signed by the employee, indicates the payment of a two dollar initiation fee and one dollar for local dues.

In our opinion the only reasonable construction that can be placed on the words "initiation fee" is that the words refer to initiation fee for membership in the union. This construction, in our view, is strengthened by the additional payment for "local dues". The Board, accordingly, in the instant case, finds that the authorization cards taken in conjunction with the accompanying receipts are tantamount to applications for membership.

In these circumstances, the Board is satisfied with the evidence of membership filed by the applicant and finds no reason to revoke its decision of September 19th."

REQUEST FOR RECONSIDERATION OF BOARD'S DECISION IN CERTIFICATION APPLICATION

6767-63-R: Fur Workers' Union, Local 82, affiliated with the Amalgamated Meat Cutters & Butcher Workmen of North America (Applicant) v. Kent Fur Co. (Respondent).

On December 18, 1963 the Board further endorsed the Record as follows:

"The first hearing was held in this matter on September 9th, 1963, and, in the course thereof, Mr. Fisher, counsel for the respondent, requested an adjournment in connection with a "preliminary objection" he

raised concerning the documentary evidence of membership filed by the applicant union on behalf of an employee in the bargaining unit. The Board issued its decision on October 2nd, 1963, in which, for the reasons stated therein, it refused to grant the adjournment and made certain findings on the basis of which a certificate was issued to the applicant union. On October 16th, 1963, Mr. Fisher wrote to the Board as follows:-

The writer and my client are at a loss to understand the procedure of the Board in connection with this supposed hearing. In view of what the Board has done, it is difficult for us to ask for a re-hearing as it is our contention that we have not received any hearing at all.

On the material sent to us, it is apparent that the writer raised a preliminary objection (that is, preliminary to the hearing). It is our contention that the matter raised in this objection was the only matter that was heard. We are naturally of the opinion that the Board should have acceded to our request to hear an employee as to her status as a member of the union; however, we contend that as this matter was to be investigated, the Board could not properly act in the way it did. Upon our motion for adjournment, the Board apparently reserved this motion and instead of re-convening the Board to announce its decision, which we contend is the proper procedure, the Board dismissed the motion and granted the certification without hearing any further argument regarding the certification itself.

The effect of the Board's decision was to deprive our client of a fair hearing, and it is further requested that the Board reconsider its decision and grant a proper hearing.

The Board forwarded a copy of Mr. Fisher's letter to Mr. Osler, counsel for the applicant, and requested his comments thereon. On October 24th, 1963,

Mr. Osler wrote to the Board as follows:-

While it is true that at the hearing on September 9th, 1963, Mr. Fisher raised what he called a 'preliminary objection', the objection concerned the documentary evidence of membership filed by the Applicant and hence was not properly preliminary but rather a representation going to the root of the application, namely, whether the Applicant had the requisite proportion of members within the meaning of the Act and the Regulations.

After considerable argument, Mr. Fisher requested an adjournment to permit him to make certain further inquiries and, according to our notes, the Board reserved its decision on this request.

The hearing concluded at that point and, to the best of our knowledge, nothing further occurred until the Board made its decision on October 2nd, 1963.

We must, therefore, with some reluctance, agree that the hearing held by the Board was incomplete, in that it did not cover any aspects of the application save that of membership and hence, in our view, it would be proper for the Board to revoke its certificate pending the completion of the hearing.

We would therefore urge that the matter be relisted for hearing at the earliest possible opportunity in order that any representations the parties may wish to make regarding the bargaining unit or other proper issues can be disposed of without delay.

Since both counsel were of opinion that the hearing on September 9th was incomplete, the Board, by its further decision of November 1st, 1963, directed that this matter be listed for hearing for the purpose referred to therein and revoked all of its decision of October 2nd, 1963, with the exception of those parts dealing with the following matters:-

- (a) Mr. Fisher's request, at the hearing on September 9th, that the Board either make inquiries itself of the employee in question or permit him to make inquiries of her at the hearing;
- (b) Mr. Fisher's request for an adjournment so that he could complete his investigation and determine whether or not to allege improper conduct on the part of the applicant with respect to the evidence of membership filed on behalf of this employee; and
- (c) its finding that this employee had paid her initiation fee to the applicant at the time she applied for membership.

Following note to the parties of the further hearing, Mr. Fisher, by a letter dated November 13th, 1963, wrote to the Board as follows:-

It is the contention of Kent Fur Co. that on the true facts Miss Cesira Tracanelli, an employee of Kent Fur Co., is not, never was and never intended to be a member of the applicant union, and therefore, the respondent has the right under the Labour Relations Act to oppose the certification of the union. The respondent appears to be confronted by the Board with the problem of introducing such evidence.

The respondent will particularly rely on Section 75 sub-section (9) of the Act which allows 'full opportunity to the parties to any proceedings to present their evidence and to make their submissions' and it is the respondent's contention that this section overcomes any rules or regulations that have the effect of suppressing the true facts.

In order to place the true facts before the Board, the respondent submits the following:-

1. A complaint which is enclosed herewith;
2. The respondent intends to again ask Miss Cesire Tracanelli to attend the proceedings and the solicitor for the applicant will be so informed.

If the Board still does not wish to consider the complaint or the presence of Miss Tracanelli, the respondent will then request that a representative vote be taken under Section 7 sub-section (5), and keeping in mind that the Board must be satisfied 'that the true wishes of the employees' are to be considered, it is intended to make Miss Tracanelli available in this regard. We are also asking that a shorthand reporter be present at the hearing on November 21, 1963.

The complaint submitted by Mr. Fisher was a complaint under section 65 of The Labour Relations Act and, as such, constituted, and was processed by the Board as, a proceeding separate from the present certification application.

The further hearing in this matter was held on November 21st, 1963. At this hearing Mr. Fisher conceded that, before he had raised his "preliminary objection" at the first hearing, the Board had brought to the attention of counsel the evidence before it with respect to the status of the applicant union, the number of employees of the respondent in the bargaining unit proposed by the applicant at the time the application was made, the number of employees of the respondent in the proposed bargaining unit claimed as members by the applicant and the nature of the documentary evidence of membership filed by the applicant on their behalf, and, moreover, had obtained additional evidence from them regarding the composition of an appropriate bargaining unit and the number of employees of the respondent in such unit at the time the application was made. When the evidence at the first hearing had thus been reviewed at the second hearing, Mr. Fisher did not proceed with his submission to the effect that, at the first hearing, the only matter dealt

with by the Board had been his "preliminary objection". It is quite obvious, therefore, that his submission in this respect was not well-founded. Accordingly, the Board informed counsel that it was satisfied that all the evidence which the parties had intended to present on the matters dealt with prior to Mr. Fisher's "preliminary objection" was before the Board and that it was prepared, as it had indicated in its notice of this hearing, to hear only their representations on any issue on the basis of such evidence.

Mr. Fisher, nevertheless, submitted again at the hearing that the Board should either make inquiries itself of Miss Tracanelli or permit him to call and examine her to ascertain whether she is "a member of the union despite the evidence of membership". The Board pointed out that both aspects of Mr. Fisher's request had been considered and ruled upon by the Board during the first hearing and that the reasons for the Board's decision in this respect were set out in paragraphs 1 and 2 of the decision of October 2nd, 1963. Having satisfied itself that the grounds for Mr. Fisher's request were the same as those previously considered by the Board at the first hearing and having in mind that Mr. Fisher had had full opportunity on the occasion of that hearing to present full argument on the matter, the Board stated that it saw no reason to alter its decision of October 2nd. The Board therefore would not make inquiries of Miss Tracanelli itself or permit Mr. Fisher to do so at this hearing for the purposes contemplated by him in his letter of November 13th, 1963. In connection with this aspect of our decision, reference must be made to the fact that Mr. Fisher, at the first hearing, had not been prepared to formulate an allegation of improper conduct against the applicant with respect to Miss Tracanelli's membership but had sought an adjournment to complete his investigation in order to determine whether to make such an allegation. The Board having refused at the first hearing to grant him an adjournment for that purpose, for the reasons given in paragraph 3 of its decision of October 2nd, it was not open to Mr. Fisher to make such allegations on November 13th and after the matter had been listed for hearing solely for another purpose.

There remains for consideration the representations of counsel with respect to the issues still outstanding in this case. Mr. Fisher's representations were solely to the effect that the Board, in the circumstances of this case, should direct that a representation vote be taken among the employees of the respondent in the bargaining unit. Mr. Osler, on the other hand, argues that a certificate should issue since the applicant filed documentary evidence of membership on behalf of both employees of the respondent in the bargaining unit and there is no evidence before the Board which casts doubt on that evidence of membership. It is clear, of course, that the jurisdiction of the Board to direct the taking of a representation vote in the circumstances of this case is derived from subsection 2 of section 7 of The Labour Relations Act and not from subsection 5 of section 7 on which Mr. Fisher appears to rely. Indeed, subsection 5 of that section contemplates an entirely different situation from that before the Board in this case."

REQUEST TO REVOKE DECISION IN CERTIFICATION APPLICATION

7030-63-R: Teamsters Chauffeurs Warehousemen and Helpers Local No. 91, affiliated with International Brotherhood of Teamsters, Chauffeurs Warehousemen and Helpers (Applicant) v. Dominion Materials Limited (Respondent). (GRANTED OCTOBER 1963).

On December 24, 1963 the Board further endorsed the Record as follows:

"On October 21st, 1963, the Board certified the applicant as bargaining agent of all the employees of the respondent at Ottawa with certain exceptions not here relevant.

On November 27th, 1963, the Board was advised by a letter from the respondent that all the employees appearing on the respondent's list filed in this matter were employed at and working in Hull, Quebec.

Subsequently on December 6th, 1963, the applicant wrote to the Board and confirmed the information forwarded by the respondent and stated in part "we therefore think that the Ontario Labour Relations Board does not have jurisdiction to certify these employees".

Having regard to the agreement of the parties, the Board is of opinion that it has no jurisdiction to deal with employees employed at Hull, Quebec and since it appears that there are no employees of the respondent employed at Ottawa, the Board revokes its decision dated October 21st in this matter and dismisses this application."

SPECIAL ENDORSEMENTS IN CONCILIATION APPLICATIONS

7149-63-C: The National Union of Public Employees (Applicant) v. The Corporation of the County of Wellington (Respondent). (TERMINATED NOVEMBER 1963).

On December 6, 1963 the Board further endorsed the Record as follows:

"The applicant requested the Board to reconsider its decision of November 6th on the basis that By-law 2399 dated November 1st, 1963 filed by the respondent did not have the approval of the Minister of Reform Institutions pursuant to Section 5 of the Penal and Reform Institutions Act R.S.O. 1960 C. 291.

On December 3rd, 1963, the respondent filed with the Board a copy of By-law 2399, with the approval of the Minister of Reform Institutions endorsed upon it.

Since the Board is without jurisdiction to process this application further, we reconfirm our decision of November 6th, terminating the application."

7209-63-C: Local 494 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Renaud General Contractor (Respondent). (REFERRED DECEMBER 1963).

- and -

7293-63-C: United Brotherhood of Carpenters & Joiners of America Local Union #494 (Applicant) v. Krogh & Sons Ltd. (Respondent). (REFERRED DECEMBER 1963).

The Board endorsed the Record in each of the above matters as follows:

"The applicant has reported to the Board that it has been unable to arrange a meeting with the respondent. The respondent has not reported to the Board.

By its decision dated November 27th, 1963, the Board directed the parties to meet, bargain in good faith, and make every reasonable effort to make a collective agreement and report their progress to the Board on or before December 5th, 1963.

In view of the circumstances, the applicant's request that conciliation services be made available to the parties is granted with respect to the employees of the respondent in the bargaining unit defined in the collective agreement between the parties effective November 15th, 1961."

7265-63-C: Hotel & Restaurant Employees' & Bartenders' International Union, AFL-CIO, Local 853 (Applicant) v. Clifton Hotel (Barrie). (Respondent). (DISMISSED DECEMBER 1963).

- and -

7267-63-C: Hotel & Restaurant Employees' & Bartenders' International Union, AFL-CIO, Local 853 (Applicant) v. Queens Hotel (Respondent). (DISMISSED 1963).

The Board endorsed the Record in each of the above matters as follows:

"The applicant has requested that conciliation services be made available to the parties with respect to the employees of the respondent in the bargaining unit described in a collective agreement between the parties, Article 14 of which reads as follows:

This Agreement shall continue in effect until the 31st day of October, 1959, and unless either party gives notice in writing to the other party that amendments are required, or that the party intends terminating the Agreement, then it shall continue in effect until the 31st day of October, 1960, and so on from year to year.

Notice: that amendments are required, should be made in writing sixty (60 days) prior to the anniversary date....

The evidence is that no notice was ever given under the terms of the agreement. From the time the agreement was executed until October 28, 1963, when the applicant served on the respondent notice of its desire to renew the agreement, the parties had had no dealings with one another. During this period, the applicant made no attempt to discuss the agreement or labour relations matters with the respondent and it processed no grievances.

As the Board said in the Belleville and District Builders Exchange Case, O.L.R.B. Monthly Report, May, 1963, p. 114:

In situations of this kind the Board has said that as a general rule it will have regard to a second automatic renewal but thereafter the onus is on the union to satisfy the Board that it has not abandoned its bargaining rights. This it may do by showing that it retained an interest through contact with the other party to the agreement. Just what contact is necessary depends on the facts in each particular case.

As we pointed out above, in the instant case there was no contact. In these circumstances, the Board finds that the applicant had abandoned the bargaining rights which it had under the collective agreement with the respondent. This application is accordingly dismissed."

E R R A T U M

In the June 1963 copy of The Monthly Report of the Ontario Labour Relations Board, page 132 the unit in the Alvin Tile Company Limited case was incorrectly reported. The entry should have read:

6050-63-R: The Bricklayers', Masons' and Plasterers' International Union of America, Local 12 Kitchener, Ontario (Applicant) v. Alvin Tile Company Limited (Respondent) v. Local 421, United Rubber, Cork, Linoleum and Plastic Workers of America (Intervener).

Unit: "all tile and terrazzo mechanics, marble masons, resilient floor layers and their helpers in the employ of the respondent at or out of Kitchener, save and except foremen and persons above the rank of foreman." (25 employees in the unit).

Number of names on elig eligibility list	25
Number of ballots cast	25
Number of ballots marked favour of applicant	23
Number of ballots marked as opposed to applicant	2

PART 2

1. Applications and Complaints to the Ontario Labour Relations Board	S41
2. Hearings of the Ontario Labour Relations Board	S41
3. Applications and Complaints disposed of by the Ontario Labour Relations Board by Major Types	S42
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Ergebnisse der Untersuchungen der Befragten über die
Gesundheit und die Lebensbedingungen der Bevölkerung

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TABLE 1

APPLICATIONS & COMPLAINTS TO THE ONTARIO LABOUR RELATIONS BOARD

	Dec. 1963	Number of applications filed 1st 9 months of fiscal year	
		63-64	62-63
I Certification	38	547	555
II Declaration Terminating Bargaining Rights	7	62	64
III Declaration of Successor Status	1	22	11
IV Conciliation Services	73	844	915
V Declaration that Strike Unlawful	-	27	26
VI Declaration that Lockout Unlawful	1	5	7
VII Consent to Prosecute	8	115	69
VIII Complaint of Unfair Practice in Employment (Section 65)	7	111	104
IX Miscellaneous	<u>2</u>	<u>16</u>	<u>18</u>
TOTAL	137	1749	1769

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	Dec. 1963	Number 1st 9 months of fiscal year	
		63-64	62-63
Hearings & Continuation of Hearings by the Board	69	791	718

TABLE III

APPLICATIONS & COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR
RELATIONS BOARD BY MAJOR TYPES

	Dec. 1963	Number of applications filed 1st 9 months of fiscal year	
		63-64	62-63
I Certification	61	593	641
II Declaration Terminating Bargaining Rights	5	79	67
III Declaration of Successor Status	5	26	4
IV Conciliation Services	82	862	901
V Declaration that Strike Unlawful	--	27	26
VI Declaration that Lockout Unlawful	--	2	10
VII Consent to Prosecute	5	115	120
VIII Complaint of Unfair Practice in Employment (Section 65)	12	117	109
IX Miscellaneous	3	10	13
TOTAL	173	1831	1891

TABLE III

CHARGE OF LIQUID AND VAPOR IN CROSSLINKED POLY(1,4-PHENYLENE TEREPHTHALATE) AS A FUNCTION OF THE VAPOR PRESSURE

CHARGE OF LIQUID	CHARGE OF VAPOR	CHARGE	CHARGE OF LIQUID	CHARGE OF VAPOR	CHARGE
0.00	0.00	0.00	0.00	0.00	0.00
0.1	0.0	0.1	0.00	0.00	0.00
0.2	0.0	0.2	0.00	0.00	0.00
0.3	0.0	0.3	0.00	0.00	0.00
0.4	0.0	0.4	0.00	0.00	0.00
0.5	0.0	0.5	0.00	0.00	0.00
0.6	0.0	0.6	0.00	0.00	0.00
0.7	0.0	0.7	0.00	0.00	0.00
0.8	0.0	0.8	0.00	0.00	0.00
0.9	0.0	0.9	0.00	0.00	0.00
1.0	0.0	1.0	0.00	0.00	0.00
1.1	0.0	1.1	0.00	0.00	0.00
1.2	0.0	1.2	0.00	0.00	0.00
1.3	0.0	1.3	0.00	0.00	0.00
1.4	0.0	1.4	0.00	0.00	0.00
1.5	0.0	1.5	0.00	0.00	0.00
1.6	0.0	1.6	0.00	0.00	0.00
1.7	0.0	1.7	0.00	0.00	0.00
1.8	0.0	1.8	0.00	0.00	0.00
1.9	0.0	1.9	0.00	0.00	0.00
2.0	0.0	2.0	0.00	0.00	0.00
2.1	0.0	2.1	0.00	0.00	0.00
2.2	0.0	2.2	0.00	0.00	0.00
2.3	0.0	2.3	0.00	0.00	0.00
2.4	0.0	2.4	0.00	0.00	0.00
2.5	0.0	2.5	0.00	0.00	0.00
2.6	0.0	2.6	0.00	0.00	0.00
2.7	0.0	2.7	0.00	0.00	0.00
2.8	0.0	2.8	0.00	0.00	0.00
2.9	0.0	2.9	0.00	0.00	0.00
3.0	0.0	3.0	0.00	0.00	0.00
3.1	0.0	3.1	0.00	0.00	0.00
3.2	0.0	3.2	0.00	0.00	0.00
3.3	0.0	3.3	0.00	0.00	0.00
3.4	0.0	3.4	0.00	0.00	0.00
3.5	0.0	3.5	0.00	0.00	0.00
3.6	0.0	3.6	0.00	0.00	0.00
3.7	0.0	3.7	0.00	0.00	0.00
3.8	0.0	3.8	0.00	0.00	0.00
3.9	0.0	3.9	0.00	0.00	0.00
4.0	0.0	4.0	0.00	0.00	0.00
4.1	0.0	4.1	0.00	0.00	0.00
4.2	0.0	4.2	0.00	0.00	0.00
4.3	0.0	4.3	0.00	0.00	0.00
4.4	0.0	4.4	0.00	0.00	0.00
4.5	0.0	4.5	0.00	0.00	0.00
4.6	0.0	4.6	0.00	0.00	0.00
4.7	0.0	4.7	0.00	0.00	0.00
4.8	0.0	4.8	0.00	0.00	0.00
4.9	0.0	4.9	0.00	0.00	0.00
5.0	0.0	5.0	0.00	0.00	0.00
5.1	0.0	5.1	0.00	0.00	0.00
5.2	0.0	5.2	0.00	0.00	0.00
5.3	0.0	5.3	0.00	0.00	0.00
5.4	0.0	5.4	0.00	0.00	0.00
5.5	0.0	5.5	0.00	0.00	0.00
5.6	0.0	5.6	0.00	0.00	0.00
5.7	0.0	5.7	0.00	0.00	0.00
5.8	0.0	5.8	0.00	0.00	0.00
5.9	0.0	5.9	0.00	0.00	0.00
6.0	0.0	6.0	0.00	0.00	0.00
6.1	0.0	6.1	0.00	0.00	0.00
6.2	0.0	6.2	0.00	0.00	0.00
6.3	0.0	6.3	0.00	0.00	0.00
6.4	0.0	6.4	0.00	0.00	0.00
6.5	0.0	6.5	0.00	0.00	0.00
6.6	0.0	6.6	0.00	0.00	0.00
6.7	0.0	6.7	0.00	0.00	0.00
6.8	0.0	6.8	0.00	0.00	0.00
6.9	0.0	6.9	0.00	0.00	0.00
7.0	0.0	7.0	0.00	0.00	0.00
7.1	0.0	7.1	0.00	0.00	0.00
7.2	0.0	7.2	0.00	0.00	0.00
7.3	0.0	7.3	0.00	0.00	0.00
7.4	0.0	7.4	0.00	0.00	0.00
7.5	0.0	7.5	0.00	0.00	0.00
7.6	0.0	7.6	0.00	0.00	0.00
7.7	0.0	7.7	0.00	0.00	0.00
7.8	0.0	7.8	0.00	0.00	0.00
7.9	0.0	7.9	0.00	0.00	0.00
8.0	0.0	8.0	0.00	0.00	0.00
8.1	0.0	8.1	0.00	0.00	0.00
8.2	0.0	8.2	0.00	0.00	0.00
8.3	0.0	8.3	0.00	0.00	0.00
8.4	0.0	8.4	0.00	0.00	0.00
8.5	0.0	8.5	0.00	0.00	0.00
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8.7	0.0	8.7	0.00	0.00	0.00
8.8	0.0	8.8	0.00	0.00	0.00
8.9	0.0	8.9	0.00	0.00	0.00
9.0	0.0	9.0	0.00	0.00	0.00
9.1	0.0	9.1	0.00	0.00	0.00
9.2	0.0	9.2	0.00	0.00	0.00
9.3	0.0	9.3	0.00	0.00	0.00
9.4	0.0	9.4	0.00	0.00	0.00
9.5	0.0	9.5	0.00	0.00	0.00
9.6	0.0	9.6	0.00	0.00	0.00
9.7	0.0	9.7	0.00	0.00	0.00
9.8	0.0	9.8	0.00	0.00	0.00
9.9	0.0	9.9	0.00	0.00	0.00
10.0	0.0	10.0	0.00	0.00	0.00

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY TYPES AND BY DISPOSITION

Disposition	Dec. 1st 9 mos. fiscal yr.			*Employees		
	'63	63-64	62-63	'63	63-64	62-63
Granted	48	426	424	1502	12002	25944
Dismissed	9	104	159	217	3443	10254
Withdrawn	4	64	58	4	950	2401
TOTAL	61	594	641	1723	16395	38599
 <u>II Termination of Bargaining Rights</u>						
Terminated	5	55	42	10	1399	1305
Dismissed	-	21	17	-	495	470
Withdrawn	-	3	8	-	85	233
TOTAL	5	79	67	10	1979	2008

*These figures refer to the number of employees directly affected and are based on the number of employees in the bargaining units at the time the applications for certification were filed with the Board. Totals for applications dismissed and withdrawn are approximate.

APPLICATIONS DISPOSED OF BY
BOARD (continued)

Number of appl'n's disp'csed of

	Dec. '63	1st 9 mos. 63-64	fiscal year 62-63
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III Conciliation Services*

Referred	74	799	804
Dismissed	3	17	20
Withdrawn	<u>5</u>	<u>46</u>	<u>77</u>
TOTAL	82	862	901

IV Declaration that
Strike Unlawful

Granted	-	6	6
Dismissed	-	3	7
Withdrawn	<u>-</u>	<u>18</u>	<u>13</u>
TOTAL	-	27	26

V Declaration that
Lockout Unlawful

Granted	-	-	1
Dismissed	-	1	6
Withdrawn	<u>-</u>	<u>1</u>	<u>2</u>
TOTAL	-	2	9

VI Consent to
Prosecute

Granted	4	41	17
Dismissed	1	10	12
Withdrawn	<u>-</u>	<u>64</u>	<u>91</u>
TOTAL	5	115	120

*Includes applications for conciliation services re unions claiming successor status.

TABLE 5

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY THE BOARD

Dec. '63	Number of Votes	
	1st 9 months of fiscal yr. 63-64	62-63

* Certification After Vote

pre-hearing vote	2	18	30
post-hearing vote	2	46	23
ballots not counted	-	-	2

Dismissed After Vote

pre-hearing vote	1	10	15
post-hearing vote	4	42	55
ballots not counted	-	1	1
TOTAL	9	117	126

*Includes applicant - intervener applications in which both applicant and intervener apply for a new unit and either applicant or intervener is certified.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY THE BOARD

Dec. '63	Number	
	1st 9 months of fiscal yr. 63-64	62-63

* Respondent Union Successful	-	5	5
Respondent Union Unsuccessful	-	25	18
TOTAL	-	30	23

*In termination proceedings where a vote is taken, the applicant is a group of employees, or the employer; the incumbent union is thus the respondent.

MONTHLY REPORT



JANUARY 1964

ONTARIO LABOUR RELATIONS BOARD

PRACTICE NOTE #8.

March 2, 1964.

Practice on Notice of Application for
Certification to Trade Unions Known
to Registrar as Claiming an Interest

1. In processing an application for certification, the Registrar is required under section 8 of the Board's Rules of Procedure to serve a copy of the application and a notice of application in Form 11 upon any trade union named in the application or in the reply as claiming to be the bargaining agent of, or to represent, any employees who may be affected by the application. The Registrar is also required under the same rule to serve a copy of the application and a notice of application in Form 11 upon any trade union known to him as claiming to be the bargaining agent or to represent any employees who may be affected by the application.
2. In carrying out his duties under section 8 of the Board's Rules of Procedure, it has been the custom of the Registrar for some years to cause a search to be made of all the records of the Board and to send a copy of the application and a notice of the application in Form 11 to every trade union which, at any time in the past, filed an application with the Board seeking certification for the employees concerned or which is named in any proceeding before the Board as claiming to represent any of the employees concerned.

There are a great many instances in which the Registrar has sent notices of the application to unions that have long since ceased to have any interest in the employees concerned. In this connection, it should be borne in mind that it is now some 20 years since the Labour Relations Board came into existence and the Board's files number over 30,000.

3. To enable the Board to deal more expeditiously with certification applications, it proposes to simplify the office practice. To ascertain whether any union not named in an application by an applicant or a respondent has an interest in the proceedings of sufficient extent to entitle it to notice, the Registrar will henceforth confine the search of the records of the Board as follows:

- (i) The Registrar will search the Board's files of applications for a period of five years immediately preceding the date of the application which is being processed but not for any period before that time. Any trade union whose interest is disclosed in such a search will be notified of the application under section 8 of the Board's Rules of Procedure.
- (ii) In addition, the Registrar will notify any trade union named as a party in the most recent collective agreement filed with the Board pursuant to section 61 of The Labour Relations Act covering any of the employees affected by the application.

4. As required by the Rules, the Registrar will continue to serve notices on the employer and on any trade union whose interest is disclosed in the application or in

the reply and he will also continue to forward to the employer notices addressed to the employees (Form 5 or Form 6) for posting on the premises of the employer in the places where the notices will come to the attention of all employees affected.

5. To insure that they will receive due notice of any application that may affect their interests, unions should make sure that copies of every collective agreement to which they are parties, or by which they are bound, are filed forthwith with the Board in accordance with section 61 of The Labour Relations Act.

6. An applicant should make certain that, in its application, it has divulged whatever knowledge it may have that another union claims to be the bargaining agent for or to represent any of the employees affected by the application. It must be emphasized that, if such information is not divulged in the application, the result may be delay in the decision of the Board.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD DURING JANUARY 1964

Bargaining Agents Certified During January
No Vote Conducted

5442-62-R: United Steelworkers of America (Applicant) v. Air Liquide (Respondent).

Unit #1: "all office and clerical employees of the respondent at London, save and except office manager, persons above the rank of office manager, outside salesmen, confidential secretary to the sales manager and students hired for the school vacation period." (6 employees in the unit).
(AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 558)

7078-63-R: United Glass and Ceramic Workers of North America (AFL-CIO CLC) (Applicant) v. A.P. Green Fire Brick Company Limited (Respondent).

Unit: "all employees of the respondent at its plant in North York, save and except foremen, persons above the rank of foreman and office and sales staff." (34 employees in the unit).

The Board endorsed the Record in part as follows:

"Having regard to the evidence contained in the report of the examiner dated November 15th, 1963, and the subsequent representations of the parties, the Board declares that Wilfred Gardner exercises managerial functions within the meaning of section 1 (3) (b) of The Labour Relations Act and is not included in the bargaining unit and we further find that Louis Curtis does not exercise managerial functions within the meaning of section 1 (3) (b) of The Labour Relations Act and is an employee of the respondent included in the bargaining unit."

Board Members H. F. Irwin dissented and said:

"I dissent. Having regard to the management functions exercised by Louis Curtis and the fact that he is entitled to participate in the supervisory incentive bonus scheme, I would find that Louis Curtis is a supervisor exercising managerial functions within the meaning of section 1 (3) (b) of The Labour Relations Act and should not be included in bargaining unit."

7099-63-R: Canadian Dressed Meats Employees' Association (Applicant) v. Canadian Dressed Meats Limited (Respondent).

Unit: "all employees of the respondent at Toronto, save and except foremen, persons above the rank of foreman and office staff." (61 employees in the unit).

The Board endorsed the Record in part as follows:

"The applicant association came into existence on October 1st, 1963. The relevant antecedent facts are as follows. The members of an employees' grievance committee were informed by the management of the respondent company that it was not prepared to discuss wages and working conditions with the grievance committee until the employees formed an association with which the respondent could bargain collectively.

The grievance committee posted a notice on the plant bulletin board calling a meeting of the employees at the neighbouring George Bell Arena for 5:00 p.m. on August 21st, 1963, after working hours. The permission of management was not secured to post the notice. At this meeting the position taken by the company was explained to the employees present. From the evidence it appears that officers were elected for an 'association' and initiation fees and dues established, but no constitution was adopted. An employees' negotiating committee was also elected. The respondent was notified of the steps taken by the employees. The respondent, however, refused to bargain with the employees' negotiating committee until affidavits were produced confirming the steps taken by the employees. The employees again approached the respondent to commence negotiations. The respondent informed the negotiating committee that it would not bargain with any employees' group association or trade union unless or until that organization obtained certification from this Board. The position of the respondent was confirmed in a letter from the respondent's solicitors dated September 26th, 1963 addressed to the solicitors for the group of employees.

A notice was posted on the plant bulletin board (without the permission of management) calling a further meeting of the employees at the George Bell Arena at 5:00 p.m. on October 1st. The solicitor retained by the "association" explained to the employees the new position adopted by the company

with respect to negotiating with the employees. He informed them that before the company would enter negotiations it would be necessary for the employees to reorganize the "association" and secure certification or to call in an international union. The employees voted in favour of reorganizing the "association" for the purpose of applying to this Board for certification. The employees subsequently adopted a constitution for The Canadian Dressed Meats Employees' Association and elected officers in accordance with the constitution. Members immediately thereafter were signed up in the association. On October 13th, 1963, the association made application for certification as bargaining agent for a unit of employees of the respondent.

On the evidence before us, we are satisfied that the company did not participate in or lend support to the formation of the applicant association. While it appears that management was aware of the activities of the grievance committee in organizing the association, no member of management either called or was present at the meetings, and the decision to form the association was taken as a result of a secret vote. Even assuming that management was aware of the notices posted in the plant, its failure to insist on their removal cannot, in our opinion, be interpreted in the circumstances of this case as support to the applicant in contravention of section 10 of The Labour Relations Act."

Board Member D. M. Storey said:

"The majority have correctly set out the material facts in this matter. However, I disagree with them on the weight to be given to such facts.

The grievance committee was advised when it met management that the respondent company was not prepared to discuss wages and/or working conditions with the grievance committee until the employees formed an association. The grievance committee then posted a notice on the plant bulletin board calling a meeting of employees for August 21st at 5:00 p.m. in the George Bell Arena. No permission was requested or received from the management concerning the right to do so. However, at this meeting, the position of the company was explained to the employees in attendance. In my opinion, the only possible interpretation of this

evidence is that the employees were told that the company would not bargain with them on wages and working conditions unless they formed an association. As a result of this report certain action was taken which is set out in paragraph 2 of the majority decision and there is no need to repeat here.

Following the company's rejection of the then constituted association a further notice was posted on the plant bulletin board, and a second meeting held and certain explanations given to the employees, which also are set out in full in paragraph 3 of the majority decision.

Following this meeting the employees were signed up in the association.

From the evidence adduced, I can only arrive at the conclusion that the employees could not help but feel that the company wanted them to form an association. The very fact that the company, while not giving permission, did allow the notices to be posted on two different occasions on the plant bulletin board amounts to at least tacit support of the association. The company must have been aware of these notices, and by not having them removed indicated support of the formation of the organization.

I am forced to the conclusion based on the evidence that the actions of the respondent company were such that they contravened the provisions of section 10 of The Labour Relations Act. They gave both support and participated in the formation of the applicant's association. I would have dismissed the application."

7138-63-R: Hotel and Restaurant Employees and Bartenders International Union - Local Union 412 (Applicant) v. Sault Windsor Hotel Limited (Respondent).

Unit: "all office employees of the respondent at Sault Ste. Marie, save and except assistant manager and persons above the rank of assistant manager." (9 employees in the unit).

7246-63-R: Retail, Wholesale and Department Store Union, AFL: CIO: CLC (Applicant) v. Dominion Stores Limited (Respondent) v. District 50, United Mine Workers of America (Intervener).

7285-63-R: District 50, United Mine Workers of America (Applicant) v. Dominion Stores Limited (Respondent) v. Retail Wholesale and Department Store Union, AFL:CIO:CLC (Intervener).

(THE ABOVE MATTERS ARE CONSOLIDATED).

Unit: "all employees of the respondent at its retail stores at Owen Sound, save and except store managers, persons above the rank of store manager, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (31 employees in the unit).

The Board endorsed the Record in part as follows:

"The application of District 50, United Mine Workers of America is dismissed."

7259-63-R: Hawkesbury Hospital Employees Union (CNTU) (Applicant) v. Notre-Dame Hospital of Hawkesbury (Respondent).

Unit: "all lay employees of the respondent at its hospital in Hawkesbury, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, foremen, persons above the rank of supervisor or foreman, chief engineer, office staff and persons regularly employed for not more than 24 hours per week." (42 employees in the unit).

The Board endorsed the Record in part as follows:

"This is an application for certification by a newly-formed organization, Hawkesbury Hospital Employees Union (CNTU). The applicant was formed on or about November 6th, 1963, and, while organizers of The Confederation of National Trade Unions (hereinafter referred to as 'CNTU') were actively engaged in its formation, the applicant is neither chartered by nor affiliated with CNTU. It appears, however, that if the applicant succeeds in obtaining certification in this application, it will then apply to CNTU and to a subordinate body thereof, The Federation of Hospital Employees (hereinafter referred to as the 'Federation'), for affiliation. Accordingly, in so far as its status as a trade union within the meaning of The Labour Relations Act is concerned, the applicant is simply an association of employees of the respondent. In such circumstances, we are not called upon to deal with its relationship to CNTU

or the Federation nor are we called upon to deal with the status of either of these organizations in this matter.

Following the hearing in this matter the president of CNTU, Jean Marchand, by letter dated December 13th, 1963, made certain representations to the Board which, for the most part, related to CNTU and its affiliated unions in the areas of 'employer domination' and 'discrimination'. Mr. Marchand, who did not attend the hearing in this matter, apparently misunderstood the nature of the inquiries which the Board had made with respect to the status of the applicant as a trade union within the meaning of The Labour Relations Act. Since, after careful consideration of the evidence presented to it and the representations made at the hearing, the Board has found, for the reasons given in paragraph 1 of this decision, that neither CNTU nor any trade union affiliated with it was a party to these proceedings, it follows that any findings made by the Board in this case have no effect on the status of CNTU or any body affiliated with it. In addition, we point out that the representations made by Mr. Marchand were not considered by the Board in making its findings in the instant matter."

7376-63-R: United Brotherhood of Carpenters and Joiners of America, Local 1988 (Applicant) v. Tops Marina Motor Hotel (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Lanark while engaged on construction projects, save and except non-working foremen and persons above the rank of non-working foreman." (18 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 583)

7408-63-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Gamble Robinson Limited (Respondent).

Unit: "all employees of the respondent at Kitchener, save and except foremen, persons above the rank of foreman, office staff and persons regularly employed for not more than 24 hours per week." (8 employees in the unit).

7413-63-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees Local Union No. 647, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. United Dairy and Poultry Co-Operative Limited (Respondent).

Unit: "all employees of the respondent at Guelph, save and except foremen, persons above the rank of foreman, driver supervisor, office staff, dairy or ice cream sales solicitors, milk bar employees, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (46 employees in the unit).

(AGREEMENT OF THE PARTIES)

7416-63-R: United Shoe Workers of America (Applicant) v. Savage Shoes Limited (Respondent).

Unit: "all employees of the respondent at its plant #6 in Galt, save and except assistant foremen, persons above the rank of assistant foreman, office and sales staff." (304 employees in the unit).

7417-63-R: International Union of Operating Engineers Local 796 (Applicant) v. York University (Respondent) v. Building Service Employees' Int'l Union, Local 204 (Intervener).

Unit: "all stationary engineers and persons engaged as their helpers employed by the respondent in the boiler room at York University in Metropolitan Toronto." (5 employees in the unit).

7421-63-R: Warehousemen and Miscellaneous Drivers Local Union 419, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Disposal Services Company (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, dispatchers, office and sales staff, and persons regularly employed for not more than 24 hours per week." (92 employees in the unit).

7435-63-R: Canadian Brotherhood of Railway, Transport and General Workers (Applicant) v. Nickel Belt Coach Lines Ltd. (Sudbury) (Respondent).

Unit: "all employees of the respondent working at or out of Sudbury, save and except foremen, persons above the rank of foreman and office staff." (14 employees in the unit).

(AGREEMENT OF THE PARTIES)

7438-63-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Bundy Tubing Company of Canada Limited (Respondent).

Unit: "all employees of the respondent at its plant in the Township of Chinguacousy, save and except foremen, persons above the rank of foreman, office and sales staff." (22 employees in the unit).

7452-63-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. The Board of Trustees for the Roman Catholic Separate Schools, Section 1, Township of Sandwich East (Respondent).

Unit: "all employees of the respondent engaged in caretaking and maintenance, save and except supervisors and persons above the rank of supervisor." (18 employees in the unit).

7463-63-R: International Hod Carriers Building and Common Labourers Union of America, Local #493 (Applicant) v. Marson Construction Company Limited (Respondent).

Unit: "all construction labourers employed by the respondent in connection with its sewer and water main contracting operations in the City of Sault Ste. Marie and in the Townships of Prince, Korah and Tarentorous and in the unorganized townships adjacent thereto, save and except foremen and persons above the rank of foreman." (3 employees in the unit).

The Board endorsed the Record in part as follows:

"On December 30th, 1963, an examiner was appointed to inquire into and report back to the Board on the composition of the bargaining unit. The examiner met with the parties on January 3rd, 1964, in Sault Ste. Marie. At that time, the parties signed an agreement on the question of the bargaining unit and the individuals to be included in the unit. That signed agreement is on file with the Board.

Having regard to the aforementioned agreement of the parties the Board further finds that all construction labourers employed by the respondent in connection with its sewer and water main contracting operations in the City of Sault Ste. Marie and the Townships of Prince, Korah and Tarentorous and in the unorganized townships of Parke and Awenge and in the townships immediately adjacent thereto, save and except foremen and

persons above the rank of foreman, constitute a unit of employees of the respondent appropriate for collective bargaining."

7469-63-R: The Lumber and Sawmill Workers' Union, Local 2995 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Paul Lahaie Ltd. (Respondent).

Unit: "all employees of the respondent in its bush operations in the Township of Coppell and those Townships immediately adjacent thereto, save and except foremen, persons above the rank of foreman, office staff, scalers and tallymen." (65 employees in the unit).

7472-63-R: Canadian Union of Public Employees (Applicant) v. Ajax and Pickering General Hospital (Respondent).

Unit: "all employees of the respondent at its hospital in Ajax, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, foremen, persons above the rank of supervisor or foreman, chief engineer, office staff and persons regularly employed for not more than 24 hours per week." (30 employees in the unit).

(AGREEMENT OF THE PARTIES)

The Board endorsed the Record in part as follows:

"For the purposes of clarity, the Board declares that the term technical personnel comprises physiotherapists, occupational therapists, psychologists, electro-encephalographers, electrical shock therapists, laboratory, radiological, pathological and cardiological technicians.

For the purposes of clarity, the Board further declares that the bargaining unit includes certified nursing assistants."

7484-63-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Sheller Manufacturing Corporation (Respondent).

Unit: "all employees of the respondent at Brampton, save and except foremen, persons above the rank of foreman and office staff." (48 employees in the unit).

7504-63-R: Local #28, International Brotherhood of Bookbinders (Applicant) v. Monetary Times Publications Ltd. (Respondent).

Unit: "all journeymen and journeywomen bookbinders and their apprentices employed by the respondent at Toronto, save and except foremen, foreladies, persons above the ranks of foreman or forelady, and office and sales staff." (12 employees in the unit).

7525-63-R: Canadian Union of Public Employees (Applicant) v. Central Elgin District High School Board (Respondent).

Unit: "all employees of the respondent, save and except professional teaching staff and office staff." (16 employees in the unit).

7567-63-R: International Union of Operating Engineers, Local Union 865 (Applicant) v. Geraldton District Hospital (Respondent).

Unit: "all stationary engineers employed by the respondent in the boiler room of its hospital at Geraldton, save and except the chief engineer." (3 employees in the unit.)

7576-63-R: Canadian Construction Workers' Union, Division No. 1. N.C.C.L. (Applicant) v. P.E. Brule Company Limited (Respondent) v. Ottawa - Hull and District Building & Construction Trades Council (Intervener) v. United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Intervener).

Unit: "all employees of the respondent working at or out of Ottawa save and except foremen, persons above the rank of foreman and office staff." (7 employees in the unit).

(AGREEMENT OF THE PARTIES)

(SEE INDEXED ENDORSEMENT PAGE 588)

7596-63-R: Operative Plasterers & Cement Masons' International Association of the United States & Canada Local Union No. 124 (Applicant) v. Olivers Industries (Respondent).

Unit: "all plasterers and plasterers' apprentices in the employ of the respondent working at or out of Ottawa, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

7606-63-R: United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. Percy Construction (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent within a radius of thirty-five miles from the City of Sudbury Federal Building, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

Certified Subsequent to Pre-Hearing Vote.

7377-63-R: Shopmen's Local Union #743 of the International Association of Bridge, Structural and Ornamental Iron Workers affiliated with the A.F.L., C.I.O., C.L.C.) (Applicant) v. Argus Steel Construction Limited (Respondent).

Unit: "all employees of the respondent employed in its shop in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, watchmen, guards, office and clerical staff, and persons engaged in installation or construction work." (61 employees in the unit).

Number of names on revised eligibility list	52
Number of ballots cast	52
Number of ballots segregated (not counted)	1
Number of ballots marked in favour of applicant	40
Number of ballots marked as opposed to applicant	11

7392-63-R: The Canadian Union of Operating Engineers (Applicant) v. Liquid Carbonic Canadian Corporation Limited (Respondent) v. International Union of Operating Engineers Local 796 (Intervener).

Unit: "all stationary engineers, firemen and persons primarily engaged as their helpers employed by the respondent at its gas plant at Toronto, save and except the chief engineer." (6 employees in the unit).

Number of names on eligibility list	6
Number of ballots cast	6
Number of ballots marked in favour of applicant	5
Number of ballots marked as opposed to applicant	1

Certified Subsequent to Post-Hearing Vote

7052-63-R: Building Service Employees' International Union, Local 263 (Applicant) v. Sault Ste. Marie General Hospital (Respondent)

Unit: "all lay employees of the respondent at Sault Ste. Marie, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, persons above the rank of supervisor, chief engineer, office staff, and persons regularly employed for not more than 24 hours per week." (216 employees in the unit).

On December 2nd, 1963 the Board endorsed the Record in part as follows:

"For the purposes of clarity the Board declares that the term technical personnel comprises physio-therapists, occupational therapists, psychologists, electro-encephalographists, electrical shock therapists, laboratory, radiological, pathological and cardiological technicians.

The Board further declares that certified nursing assistants are included in the bargaining unit."

Number of names on revised eligibility list	204
Number of ballots cast	186
Number of ballots segregated (not counted)	10
Number of ballots marked in favour of applicant	116
Number of ballots marked as opposed to applicant	60

7199-63-R: Brotherhood of Painters, Decorators & Paperhangers of America, Glaziers and Glassworkers Local 1819 (Applicant) v. Pilkington Glass Limited (Respondent) v. International Chemical Workers Union (Intervener).

Unit: "all inside employees of the respondent at 27 Mercer Street in Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, cafeteria attendants, persons regularly employed for not more than 24 hours per week, security guards and persons covered by a subsisting collective agreement between the applicant and the respondent." (18 employees in the unit).

Number of names on revised eligibility list	17
Number of ballots cast	17
Number of ballots marked in favour of applicant	15
Number of ballots marked in favour of intervener	2

7200-63-R: Brotherhood of Painters, Decorators & Paper-hangers of America, Glaziers and Glassworkers Local 1819 (Applicant) v. Service Glass & Mirror Ltd. (Respondent) v. International Chemical Workers Union (Intervener).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, cafeteria attendants, security guards, persons regularly employed for not more than 24 hours per week and persons covered by a subsisting collective agreement between the applicant and the respondent." (5 employees in the unit).

Number of names on revised eligibility list	4
Number of ballots cast	4
Number of ballots marked in favour of applicant	4
Number of ballots marked in favour of intervener	0

7201-63-R: Brotherhood of Painters, Decorators & Paper-hangers of America, Glaziers and Glassworkers Local 1819 (Applicant) v. Advance Glass & Mirrors Ltd. (Respondent) v. Canadian Glassworkers Union (Intervener).

Unit: "all inside employees of the respondent at Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, cafeteria attendants, persons regularly employed for not more than 24 hours per week, security guards and persons covered by a subsisting collective agreement between the applicant and respondent." (17 employees in the unit).

Number of names on revised eligibility list	18
Number of ballots cast	18
Number of segregated ballots (not counted)	1
Number of ballots marked in favour of applicant	15
Number of ballots marked in favour of Canadian Glassworkers Union	2

7237-63-R: International Association of Machinists (Applicant) v. Boeing of Canada, Ltd. (Respondent) v. Vertol Division Boeing Employees' Association (Intervener).

Unit: "all employees of the respondent in its Vertol Division at Arnprior, save and except foremen, persons above the rank of foreman, technical personnel and office and sales staff." (71 employees in the unit).

(AGREEMENT OF THE PARTIES)

Number of names on revised eligibility list	71
Number of ballots cast	71
Number of ballots marked in favour of applicant	38
Number of ballots marked in favour of intervener	33

7278-63-R: Amalgamated Lithographers of America, Local 12 (Applicant) v. Toronto Carton Co. Limited (Respondent).

Unit: "all pressmen, feeders and press helpers in the lithographic department of the respondent at Metropolitan Toronto." (4 employees in the unit).

Number of names on eligibility list	4
Number of ballots cast	4
Number of ballots segregated (not counted)	1
Number of ballots marked in favour of applicant	3
Number of ballots marked in favour of Printing Specialties & Paper Products Union, Local	0

7206-63-R: Canadian Union of Operating Engineers (Applicant) v. The Leamington District Memorial Hospital (Respondent).

Voting Constituency: "all stationary engineers and persons primarily engaged as their helpers and maintenance men employed by the respondent at Leamington, save and except the chief engineer." (5 employees in the constituency).

The Board endorsed the Record as follows:

"The applicant has applied to be certified as bargaining agent for all stationary engineers and persons primarily engaged as their helpers and maintenance men employed by the respondent at Leamington, save and except the chief engineer.

The persons for whom the applicant has applied to be certified as bargaining agent are currently represented by the Building Service Employees' International Union, Local 210 and are part of an overall integral unit represented by the incumbent union.

The incumbent union although served with notice of this application has failed to intervene and was not represented at the hearing in this matter.

The respondent filed a reply and was represented at the hearing in this matter.

The applicant argued that the persons whom it seeks to represent are entitled to be represented by the applicant craft union because of the recognized craft status of stationary engineers and in addition the applicant argued that its claim to represent these employees is supported by the fact that the incumbent trade union has not posted this application.

The Board finds that the stationary engineers in the employ of the respondent are currently bound by a collective agreement between the respondent and Building Service Employees' International Union, Local 210 and have been bargained for by the incumbent trade union since 1958. The Board further finds that the collective agreement covering the stationary engineers has a separate wage schedule covering the classifications of engineers and helpers under which classifications the employees for whom the applicant seeks to bargain are paid, that the collective agreement covering these employees contains a grievance procedure and arbitration clause which is available to those employees and in addition the stationary engineers benefit under an institution wide seniority. We further find that the general wage increase negotiated by the incumbent trade union provided for a greater increase for stationary engineers than any other classification. On three occasions and on a fourth occasion the stationary engineers received the highest rate of increase granted. We are further satisfied that no grievance has been launched pursuant to the grievance proceeding under the collective agreement by any stationary engineer.

Having regard to the decisions of the Board in the Lily Cup Case, Ontario Labour Relations Board Monthly Report, January 1961, page 370, The Canadian Foundries and Forgings Case, 1961, C.C.H. Canadian Labour Law Reporter, 16,203, C.L.S. 76-753 and Automatic Electric(Canada) Limited Case, Board File No. 1501-61-R, and the history of collective bargaining between the respondent and the incumbent trade union as evidenced by the length of continuous representation by the incumbent trade union of the stationary engineers, the separate wage schedules contained in the collective agreement, the absence of any unresolved grievances and the fact that on many occasions the stationary engineers received greater wage increases than any other occupational classification under the collective agreement and the opposition of the application by the respondent, the Board is of opinion that it should exercise its discretion under section 6(2) of The Labour Relations Act and accordingly finds that the bargaining unit proposed by the applicant is not proper in the circumstances of this case.

The application is therefore dismissed."

Board Member G.R. Harvey dissented and said:

"I dissent. I would find the bargaining unit proposed by the applicant to be appropriate in the circumstances of this case and would accordingly direct that ballots cast in the representation vote be counted."

Number of names on eligibility list	5
Number of ballots cast	5

Certification Dismissed - No Vote Conducted

5442-62-R: United Steelworkers of America (Applicant) v. Air Liquide (Respondent).

Unit #2: "all employees of the respondent at London, save and except foremen, persons above the rank of foreman, office manager, persons above the ranks of foreman and office manager, outside salesmen, office and clerical staff and students hired for the school vacation period." (20 employees in the unit).

6825-63-R: United Brotherhood of Carpenters & Joiners of America Local Union 1487 affiliated with the Carpenters District Council of Toronto and Vicinity (Applicant) v. The Foundation Company of Canada Limited (Respondent) v. International Union of Operating Engineers Local 793 (Intervener) v. International Hod Carriers' Building and Common Labourers Union of America, Local Union #183 (Intervener). (10 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 574)

7350-63-R: United Brotherhood of Carpenters & Joiners of America (Applicant) v. Standard Prestressed Structures Limited (Respondent) v. International Hod Carriers Building and Common Labourers Union of America, Local #506 (Intervener). (2 employees).

(SEE INDEXED ENDORSEMENT PAGE 580)

7495-63-R: Hotel & Restaurant & Bartenders International Union A.F.L.-C.I.O. Local 197, Hamilton, Ontario (Applicant) v. Paul Senson carrying on business as Piccadilly Public House (Respondent). (4 employees).

The Board endorsed the Record as follows:

"The applicant having failed to file a declaration concerning membership documents (Form 9) in accordance with section 6 of the Board's Rules of Procedure, this application is therefore dismissed."

Applications for Certification Dismissed Subsequent to Post-Hearing Vote

6979-63-R: Lumber and Sawmill Workers' Union, Local 2537 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Gerard Gauthier (Respondent).

Unit: "all employees of the respondent at its sawmill at Sultan, save and except foremen, persons above the rank of foreman and office staff." (27 employees in the unit).

Number of names on revised eligibility list	9
Number of ballots cast	9
Number of ballots marked in favour of applicant	0
Number of ballots marked as opposed to applicant	9

7129-63-R: International Hod Carriers Building and Common Labourers Union of America, Local #493 (Applicant) v. Deerfield Construction Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in the City of Sault Ste. Marie and in the Townships of Prince, Korah and Tarentorous and in the unorganized Townships of Parke and Awenge and in the Townships immediately adjacent thereto, save and except non-working foremen and persons above the rank of non-working foreman." (9 employees in the unit).

On January 9, 1964 the Board endorsed the Record as follows:

"Following the taking of the representation vote in this matter on November 27th, 1963, the applicant requested an extension of time in which to file objections to the vote. This extension was granted and accordingly objections were not received until December 10th. The state of the Board's calendar made it impossible to list the matter for hearing before January 7th.

While we are not unduly concerned with the fact that Joly, the union representative, was not permitted to be present during the taking of the vote in question, since this is the usual practice followed by the Board, we are concerned with the fact that the person who represented the objectors at the original hearing of this matter acted as the respondent's scrutineer during the taking of the vote. This fact along with the other circumstances of this case including the presence of an additional company representative at the vote, and the small number and type of employees involved, render it unlikely, in our view, that the employees would feel free to express their true desires at the ballot box. In these circumstances, the result of the vote must be set aside.

However, for the reasons which were indicated at the hearing, we are not prepared to apply section 7(5) of The Labour Relations Act and certify the applicant.

In the result, therefore, a new representation vote will be taken of employees of the respondent in the bargaining unit defined in the Board's decision of November 12, 1963."

Board Member R. W. Teagle dissented and said:

"I dissent. In all the circumstances of this case I would have dismissed the application."

Number of names on eligibility list	4
Number of ballots cast	4
Number of ballots marked in favour of applicant	0
Number of ballots marked as opposed to applicant	4

7396-63-R: International Molders and Allied Workers Union AFL-CIO.CLC and its Local #28 (Applicant) v. Fairbank Foundry Company (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, and persons regularly employed for 24 hours or less per week." (13 employees in the unit).

Number of names on eligibility list	10
Number of ballots cast	10
Number of ballots marked in favour of applicant	5
Number of ballots marked as opposed to applicant	5

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JANUARY 1964

7277-63-R: Lumber & Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters & Joiners of America (Applicant) v. Chukuni Lumber Company Limited (Respondent). (12 employees).

(WRITTEN REASONS).

7546-63-R: International Brotherhood of Electrical Workers Local Union 1687 Sudbury, Ontario (Applicant) v. Canadian Comstock Company Limited (Toronto) (Respondent). (29 employees).

APPLICATIONS FOR TERMINATION DISPOSED OF DURING JANUARY 1964

7018-63-R: Douglas Campbell (Applicant) v. Local Union 633 Amalgamated Meat Cutters and Butcher Workmen of North America AFL-CIO (Respondent) v. Wesley Spurrell (Intervener). (DISMISSED). (4 employees).

(Re: Homedale IGA Foodliner Meat Departments,
St. Thomas, Ontario).

Number of names on eligibility list	2
Number of ballots cast	2
Number of ballots marked in favour of respondent	1
Number of ballots marked as opposed to respondent	1

7245-63-R: August Jaagumagi (Applicant) v. United Steel-
workers of America (Respondent) v. American-Standard
Products (Canada) Limited (Intervener). (GRANTED).
(25 employees).

(Re: American-Standard Products (Canada) Limited,
Lansdowne Plant, Toronto, Ontario)

Number of names on eligibility list	26
Number of ballots cast	26
Number of ballots marked in favour of respondent	4
Number of ballots marked as opposed to respondent	22

7344-63-R: Gordon Jamieson (Applicant) v. Local 938,
International Brotherhood of Teamsters (Respondent).
(GRANTED). (25 employees).

(Re: John Grant Haulage Ltd.,
Clarkson, Ontario)

Number of names on revised eligibility list	16
Number of ballots cast	16
Number of ballots marked in favour of respondent	0
Number of ballots marked as opposed to respondent	14

7440-63-R: McGavin Transport Limited (Applicant) v.
International Brotherhood of Teamsters, Chauffeurs, Ware-
housemen and Helpers of America - Local Union #880
(Respondent). (GRANTED). (3 employees).

(Re: McGavin Transport Limited,
Chatham, Ontario)

The Board endorsed the Record as follows:

"The applicant has applied for a declaration terminating the bargaining rights of the respondent.

The applicant and the respondent entered into a collective agreement dated January 16th, 1959, which collective agreement was for a term of one year and contained the provision that it 'shall continue in force from year to year thereafter unless in any year not less than sixty (60) days before the date of its termination either party shall furnish the other with notice of termination of or proposed revision of the agreement'.

The respondent trade union failed to give notice pursuant to the terms of the collective agreement or pursuant to section 40 of The Labour Relations Act at any time since the 16th day of January 1959, and no notice was given by the applicant.

There has been no contact between the applicant and the respondent trade union since the said collective agreement was entered into, the respondent trade union has failed to attempt to administer the agreement and there have been no union dues deducted from any of the applicant's employees and forwarded to the respondent.

In these circumstances, the Board finds that the respondent has abandoned its bargaining rights and accordingly no longer represents the employees of McGarvin Transport Limited at Chatham for whom it has heretofore been the bargaining agent."

7468-63-R: The Shop Employees of Gorries Downtown Chevrolet Ltd. (Applicant) v. Welders, Public Garage Employees, Motor Mechanics and Allied Workers Local Union 847, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. A.D. Gorrie & Company Limited (Intervener). (GRANTED). (83 employees).

(Re: A.D. Gorrie & Company Limited,
Toronto, Ontario)

The Board endorsed the Record as follows:

"The applicant having made an application to terminate the bargaining rights of the respondent and the respondent having advised

the Board at the hearing and by letter dated January 14th, 1964, that it 'no longer claim to represent the employees of A. D. Gorrie and Company Ltd.', the Board finds that the respondent has abandoned its bargaining rights and no longer represents the employees of A. D. Gorrie & Company Limited for whom it has heretofore been the bargaining agent."

7502-63-R: Ronald Lyons and the employees of Mother Parker's Tea & Coffee Ltd. (Applicant) v. International Association of Machinists (Respondent) v. Mother Parker's Tea and Coffee Limited (Intervener). (GRANTED). (47 employees).

(Re: Mother Parker's Tea and Coffee Limited, Metropolitan Toronto)

The Board endorsed the Record as follows:

"The applicant having made an application to terminate the bargaining rights of the respondent and the respondent having advised the Board by letter dated January 17th, 1964, that it 'no longer claims to represent the employees of Mother Parker's Tea & Coffee Ltd.', the Board finds that the respondent has abandoned its bargaining rights and no longer represents the employees of Mother Parker's Tea & Coffee Ltd. for whom it has heretofore been the bargaining agent."

7524-63-R: D. M. Sim and E. Peterkin (Applicants) v. Canadian Union of Public Employees Local Union Number 883 (Respondent). (DISMISSED). (15 employees).

(Re: The Salvation Army Grace Hospital, Ottawa, Ontario)

7549-63-R: Herman Dever, on behalf of a group of employees (Applicant) v. Sudbury General Workers Union Local 101 Canadian Labour Congress (Respondent). (WITHDRAWN). (12 employees).

(Re: The Great Atlantic & Pacific Tea Company Ltd., Sudbury Stores)

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING JANUARY 1964

7323-63-R: Toronto Newspaper Printing Pressmen's Union No. One of the International Printing Pressmen and Assistants' Union of North America (Applicant) v. Murray Printing and Gravure Limited (Respondent) v. The Independent Rotogravure Pressmen & Assistants Association (Predecessor).

The Board endorsed the Record in part as follows:

"The Board finds that the applicant is, by reason of a merger, the successor of The Independent Rotogravure Pressmen & Assistants Association which was the bargaining agent for a unit of employees of the respondent defined in a collective agreement between Murray Printing and Gravure Limited and The Independent Rotogravure Pressmen & Assistants Association.

7494-63-R: Lumber and Sawmill Workers Union Local 2693 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Port Arthur Shipbuilding Company (Respondent) v. United Brotherhood of Carpenters and Joiners of America, Local 850 (Predecessor). (GRANTED).

The Board endorsed the Record in part as follows:

"The Board finds that the applicant is, by reason of a merger, the successor to the United Brotherhood of Carpenters and Joiners of America, Local 850 which was the bargaining agent for a unit of employees of the respondent defined in a collective agreement between the Port Arthur Shipbuilding Company and Local Lodges of The American Federation of Labour which includes the United Brotherhood of Carpenters and Joiners of America, Local 850, effective April 1st, 1962 until March 31st, 1964 with year to year continuation clause subject to notice."

APPLICATION UNDER SECTION 79 OF THE ACT DISPOSED OF DURING JANUARY 1964

6698-63-M: United Steelworkers of America (Applicant) v. Barlin-Scott Manufacturing Company Limited (Township of Saltfleet) (Respondent). (WITHDRAWN).

(SEE INDEXED ENDORSEMENT PAGE 595)

APPLICATION FOR DETERMINATION UNDER SECTION 34(5) OF THE
ACT DISPOSED OF DURING JANUARY 1964

7386-63-H: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. M.E. Doyle Ltd. (Atikokan) (Respondent).

The Board endorsed the Record as follows:

"This matter was referred to the Board by the Minister on December 4th, 1963 pursuant to the provisions of section 34(5) of The Labour Relations Act.

The United Brotherhood of Carpenters and Joiners of America, Local Union 1669 submitted to the Board a document in writing dated December 14th, 1961 which purports to be signed on behalf of the United Brotherhood of Carpenters and Joiners of America, Local Union 1669 and on behalf of M.E. Doyle Ltd., Atikokan, Ontario.

This document incorporates by reference the terms and conditions contained in the current collective agreement between the United Brotherhood of Carpenters and Joiners of America, Local Union 1669 and the Lakehead Builders Exchange, which agreement was made on the 1st day of April, 1962, and remains in force until the 31st day of March 1964, and may be changed or renewed from time to time by negotiations and/or by lapse of time.

The agreement dated December 14th, 1961 covers 'all projects of the Contractor in all that part of Northwestern Ontario west of a line running through Pagwa and White River.'

At the hearing in this matter the United Brotherhood of Carpenters and Joiners of America, Local Union 1669 alleged that the agreement dated December 14th, 1961 was signed on behalf of the contractor by M.E. Doyle and on behalf of the trade union and that the current agreement between the trade union and the Lakehead Builders Exchange which was made on the 1st day of April, 1962 is a renewal of the collective agreement which was in existence on the 14th day of December, 1961 at the time the agreement was entered into by M.E. Doyle Ltd. and the trade union.

Counsel for H.E. Doyle Ltd. at the hearing in this matter stated that he was not quarrelling with the form of the collective agreement but took the position that the trade union failed to prove that H.E. Doyle Ltd. had in fact executed the agreement in that no witness was called who had in fact seen H.E. Doyle sign the agreement on behalf of H.E. Doyle Ltd.

Since the trade union has alleged that the agreement dated December 14th, 1961 was signed on behalf of H.E. Doyle Ltd. and the agreement itself purports to be signed on behalf of H.E. Doyle Ltd., in the absence of any evidence to the contrary or a denial by H.E. Doyle Ltd. that the agreement was not signed by or on behalf of H.E. Doyle Ltd., the Board is prepared to accept and give effect to the evidence which it has.

Accordingly, the Board finds that H.E. Doyle Ltd. and the United Brotherhood of Carpenters and Joiners of America, Local Union 1669 are parties to a collective agreement which was entered into the 14th day of December, 1961."

COMPLAINT CONCERNING FINANCIAL STATEMENT DISPOSED OF
DURING JANUARY 1964

7352-63-U: Leslie Cross (Complainant) v. United Automobile Workers of America C.I.O. Local 984 (Respondent).

The Board endorsed the Record as follows:

"The respondent union having furnished to the applicant the financial statement requested by him and also having filed with the Registrar a copy of the financial statement, the request upon which this complaint is based has been satisfied. This proceeding is accordingly terminated."

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED
OF DURING JANUARY 1964

7556-63-U: Queensway Iron Works Ltd. (Applicant) v. Shopmen's Local Union No. 757 of the International Association of Bridge, Structural and Ornamental Iron Workers (affiliated with the AFL-CIO-CLC) (Respondent). (WITHDRAWN).

7557-63-U: Leaside Iron & Ornamental Company Limited (Applicant) v. Shopmen's Local Union No. 757 of the International Association of Bridge, Structural and Ornamental Iron Workers (affiliated with the AFL-CIO-CLC) (Respondent). (WITHDRAWN).

APPLICATIONS FOR DECLARATION THAT LOCKOUT UNLAWFUL
DISPOSED OF DURING JANUARY 1964

7271-63-U: Lumber & Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters & Joiners of America (Applicant) v. Chukuni Lumber Company Limited (Respondent). (WITHDRAWN).

7272-63-U: Lumber & Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters & Joiners of America (Applicant) v. Chukuni Lumber Company Limited (Respondent). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF
DURING JANUARY 1964

6940-63-R: Building Service Employees' International Union, Local 183, Belleville, Ontario (Applicant) v. Trenton Memorial Hospital (Respondent). (WITHDRAWN).

(WRITTEN REASONS).

7269-63-U: Lumber & Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters & Joiners of America (Applicant) v. Chukuni Lumber Company Limited (Respondent). (WITHDRAWN).

7270-63-U: Lumber & Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters & Joiners of America (Applicant) v. Chukuni Lumber Company Limited (Respondent). (WITHDRAWN).

7289-63-U: Lumber & Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters & Joiners of America (Applicant) v. Oscar Nymark (Respondent). (WITHDRAWN).

7290-63-U: Lumber & Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters & Joiners of America (Applicant) v. Mr. N. Scott (Respondent). (WITHDRAWN).

7373-63-U: Lumber & Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters & Joiners of America (Applicant) v. Chukuni Lumber Company Limited (Respondent). (WITHDRAWN).

7374-63-U: Lumber & Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters & Joiners of America (Applicant) v. Chukuni Lumber Company Limited (Respondent). (WITHDRAWN).

7378-63-U: Sheet Metal Workers' International Association, Local Union 568 (Applicant) v. Dumont Aluminum Limited and Bepi Viola (Hamilton) (Respondent). (WITHDRAWN).

7397-63-U: Frank Paul, carrying on business as F.C.P. General Contracting (Applicant) v. A. Bonser and Robert Reid (T.T.C. Subway Station project at the corner of Sherbourne and Bloor Streets, Toronto) (Respondent). (WITHDRAWN).

7399-63-U: Frank Paul carrying on business as F.C.P. General Contracting (Applicant) v. The United Brotherhood of Carpenters and Joiners of America, Local 27 (Respondent). (WITHDRAWN).

7423-63-U: Lucien Cola (Applicant) v. Lumber & Sawmill Workers' Union Local 2537 (Respondent). (WITHDRAWN).

7443-63-U: Printing Specialties & Paper Products Union, Local 466 (Applicant) v. Collett & Sprule Boxes, a division of Oxford Paper Boxes Limited (Respondent). (WITHDRAWN).

7453-63-U: Sarnia Typographical Union No. 837 (Applicant) v. Sarnia Gazette Publishing Company Limited (Respondent). (GRANTED).

The Board endorsed the Record as follows:

"The Board consents to the institution of a prosecution against the respondent in this matter for the following offence alleged to have been committed:

that the said Sarnia Gazette Publishing Company Limited did contravene subsections (a) and (c) section 50 of The Labour Relations Act in that commencing on or about the 8th day of November, 1963, it did discriminate against its employees that were or were about to become members of a trade union and further that it did by threat or by the imposition of a pecuniary penalty compel or attempt to compel its employees to refrain from continuing to be members of a trade union.

The appropriate documents will issue."

7547-63-U: United Steelworkers of America (Applicant) v. C & R Metal Products Limited (Sudbury) (Respondent). (WITHDRAWN).

7558-63-U: Queensway Iron Works Ltd. (Applicant) v. Shopmen's Local Union No. 757, of the International Association of Bridge, Structural and Ornamental Iron Workers (affiliated with the AFL-CIO-CLC) (Respondent) v. Dick Van Gyzen (Toronto 18) (Respondent). (WITHDRAWN).

7559-63-U: Leaside Iron & Ornamental Company Limited (Applicant) v. Shopmen's Local Union No. 757 of the International Association of Bridge, Structural and Ornamental Iron Workers (affiliated with the AFL-CIO-CLC) (Respondent). (WITHDRAWN).

APPLICATIONS UNDER SECTION 65 DISPOSED OF DURING JANUARY 1964

6369-63-U: Retail Clerks International Association (Complainant) v. Sentry Department Stores Limited (Respondent).

The Board endorsed the Record as follows:

"This is a complaint for relief under section 65 of The Labour Relations Act.

The complainant alleges that the aggrieved person, June Lasenby, was discharged by the respondent in contravention of section 50 of The Labour Relations Act.

The aggrieved person, June Lasenby, was employed by the respondent as a cashier when it opened its Sarnia store in November 1962. Approximately one week after she commenced her employment she was promoted to the position of head cashier. In December of 1962 an employees' committee was established to deal with management in matters relating to the wages and working conditions of the employees. Lasenby was elected as representative of the cashiers on the committee and was subsequently elected as president of the committee. It appears from the evidence that some time early in May Lasenby and other members of the committee became dissatisfied with the progress that the committee was making in its relations with the management of the store. She and other officers of the committee resigned their positions on the committee. About this time Lasenby communicated with and subsequently

joined the complainant union and actively assisted the union in organizing the employees in the store. On the evening of May 14th Lasenby called a meeting of the employees at the Colonial Hotel in Sarnia for the purpose of discussing the possibility of a new employees' association. There is little evidence as to what transpired at that meeting, but immediately thereafter Mr. Rees, an organizer for the union, spoke to the employees present and solicited their support for the union. During the afternoon of May 17th, 1963 an altercation occurred between Lasenby and a cashier named Donna Ellis at a cash register. Following the altercation Lasenby was suspended by the store manager George Harold until Monday. Richard Surowicz who at the time in question was store operations manager came to Sarnia on the morning of Saturday, May 18th and conducted an investigation into the suspension. Surowicz informed Lasenby on the Monday that he was continuing her suspension. He testified that he subsequently decided to discharge her. This decision was not conveyed to Lasenby. In any event, Lasenby has not been employed by the respondent since May 17th.

Very extensive evidence was adduced relating to this complaint over a total period of four days. It is not the intention of the Board to review the evidence in detail. We would, however, make a number of comments on what, in our opinion, are very relevant features of the evidence upon which the Board has based its decision.

The Board is of the opinion that Lasenby was a satisfactory employee to the respondent until approximately April of this year. It appears from the evidence that as president and spokesman for the employees' committee that a certain disharmony developed between herself and Surowicz as a result of her activities on behalf of the committee. Upon her resignation as president of the employees' committee and her subsequent leading role in support of the union, of which Harold was aware, her relationship with him rapidly deteriorated.

The respondent alleges that Lasenby was suspended on May 17th because she caused a disruption in the service to customers at a cash

register and for threatening Ellis with court act. Lasenby specifically denies the latter allegation. With regard to the alleged incident, the Board finds material inconsistencies between the evidence given by Harold in examination-in-chief and that given in cross-examination. We also find relevant conflicts between the evidence of Harold and Ellis. Accordingly, between the evidence of Ellis and Harold on the one hand, and that of Lasenby, the Board is prepared to accept the evidence of Lasenby. In our view, Harold made no effort to appraise the merits of what appears to have been a very brief altercation between Lasenby and Ellis, but rather immediately seized upon the incident as an excuse to suspend her. Having regard to all the evidence the Board is of the opinion that Harold was motivated to suspend Lasenby on May 17th because of her active role in support of the union.

On Saturday, May 17th, Surowicz interviewed a number of employees including Ellis, and Agnes Ansley, the manager of the cafeteria. On that date both Ellis and Ansley signed statements written by Surowicz alleging certain conduct on the part of Lasenby, particularly relating to the making of 'voids' to cover cash deficiencies. Both statements were submitted in evidence. Having regard to the admissions of Ellis in cross-examination the Board finds that her signed statement is in part based on hearsay, and in a very material respect was misleading to the Board. In this circumstances we are unable to give any weight to her evidence. Having regard to the demeanour of Ansley and and her very apparent vindictive attitude towards Lasenby, we can give little weight to her evidence.

After reviewing the great volume of evidence relating to Lasenby's alleged misconduct in making of voids and advising other employees in the misuse of 'voids', the Board is only prepared to find that on one occasion, Lasenby made a void for approximately \$4.00 to cover a cash shortage of another cashier. The making of this void was admitted in evidence by Lasenby. She testified, however, in doing so she did not believe she was acting in breach of store practice. The Board has no doubt that the making of 'voids' to cover cash deficiencies is contrary to the policy of the respondent

company. However, having regard to the evidence of Harold, Surowicz, Mr. Bigham, the assistant manager, and Kathleen Hartoon, who supervises the cash operation of the store, the method of handling cash during the period that Lasenby was an employee can only be described as lax. In view also of undisputed evidence relating to the conduct of some of Lasenby's superiors in matters relating to the handling of cash in the store, we find her explanation credible.

In the light of all the evidence, we are of the opinion Surowicz carried out a zealous investigation into the past conduct of Lasenby in a determined effort to find plausible justification for his action. It appears from the evidence that Surowicz prepared the statements signed by Ellis and Ansley but made no effort to check on their validity. At no time did he confront Lasenby with her alleged misuse of 'voids'. At no time either did he notify her of her discharge, even though all the evidence upon which he reached his decision to discharge her was known to him on May 20th, the date on which he informed her that he was continuing the suspension. The Board is accordingly satisfied that Surowicz refused to lift Lasenby's suspension and subsequently discharged her because of her union activities.

Our determination of the action to be taken by the respondent is set forth in the Board's endorsement of November 7th, 1963."

Board Member M.C. Hay dissented and said:

"I dissent.

On my assessment of the credibility of the numerous witnesses and the weight which I give to their testimony, I find that the complainant was not discriminated against for union activity but was suspended and subsequently discharged for cause.

In my considered opinion the following facts and conclusions are supported by the evidence.

Mrs. Lasenby's employment with the Respondent was of a relatively short duration, being in all approximately six months. Prior to March 20th,

while Mr. Young was store manager, the store personnel were being trained in their duties and considerable instability existed, arising in part from the efforts of management to secure and train sufficient personnel since the store was a new one. During the period while Mr. Young was manager Mrs. Lasenby was permitted complete freedom and took great advantage from her dual capacity as chairman of the employee's committee and head cashier.

The manager's failure to discipline her for her frequent absences from her work station on personal business, and to deal with complaints concerning her exercise of authority and her job performance, coupled with her domineering personality caused employees to believe that in order to be sure of fair treatment they had to do her bidding. In the words of one witness 'You just wouldn't cross her.'

Mrs. Lasenby's privileged position was however, challenged when Mr. Harold took over as store manager and both he, the assistant manager Mr. Brigham, and the store operations manager Mr. Surowicz, spoke to her on numerous occasions concerning her unsatisfactory job performance and her attitude toward both management and other store employees. Her apparent resentment to such criticism is indicated not only by her failure to correct the matters complained of but also by her adoption of an openly defiant and hostile attitude toward management. It was not however until May 5th when Mr. Surowicz complained to her concerning the high cost of the cash operation that she accepted the fact that things had changed and that her own job was in jeopardy if she continued to refuse to follow management directives. Immediately following this discussion Mrs. Lasenby told the other cashiers her employment was being threatened and she instructed them to correct certain of their work practices. She also applied to one of the concessionaires for employment in its department. It was at this time that Mrs. Lasenby decided to bring in a union to try to protect her job and accordingly on May 7th she talked to Mr. Rees and signed a union application. As president of store employees association she then called a meeting of the association for the evening of May 14 at the Colonial Hotel. This meeting, which Mrs. Lasenby says was called for the purpose of

discussing the possible formation of a new employee association,-although she had already joined the Retail Clerks International Union on May 7- was the first meeting of the association held off the store premises. It was not in my opinion a coincidence that Mr. Rees happened to be staying at the Colonial Hotel or that he appeared at and addressed the meeting. From then on Mrs. Lasenby went out of her way to establish a public position in support of the union. She resigned her position with the employees association - she spoke in favour of the union at the employees meeting - she openly approached employees to join the union on company premises during working hours - she even solicited membership of the manageress of a department.

In my opinion, her activities, directed as they were to promoting open unrest and dissatisfaction among employees, were calculated to defy management to discharge her and thus permit the bringing of the instant application. I am supported in this view by the fact that on Friday, May 17th, the day of her suspension, Mrs. Lasenby kept a notebook in which she recorded the events of the day as they occurred. Additionally she had another employee double check some of her work. She stated in evidence the reason for these precautions was that she 'felt uneasy' and that she 'felt something was going to happen.' That she was neither disappointed nor surprised when it did is clear from the events which followed for, when by 4 o'clock the incidents concerning which she had been taking notes had not prompted management action, she provoked an altercation with the cashier who had replaced her as a representative on the employee association committee and threatened her with court action. This incident occurred at the check-out desk while the cashier was serving a line of customers. The store manager, contrary to what I believe to have been her expectations, did not discharge her, but fully realizing the position in which he was placed because of her known union activities, placed her on suspension for one working day and immediately contacted his superior. Although there is no evidence Mrs. Lasenby would suffer any loss of pay during this extremely short suspension or that her position in the matter would not have been fully vindicated, she began to picket the store within one half hour of her suspension and continued such

picketing until 10 o'clock that evening and from 10 a.m. to 10 p.m. the following day.

As a result of Mr. Harold's long distance telephone call, Mr. Surowicz came to Sarnia the following morning and conducted an investigation into the suspension, during the course of which several employees volunteered information that Mrs. Lasenby had on two occasions created 'voids' to cover cash shortages in her own department and had suggested to other supervisors that they adopt the same technique to cover shortages in their departments. Surowicz satisfied himself that these allegations were true and, having regard to Mrs. Lasenby's position as head cashier, the serious nature of this breach of published store regulations and the general unsatisfactory nature of her conduct and her work performance concerning which he had had discussions with her on numerous occasions, he refused to lift her suspension and she was subsequently discharged.

In the light of all the evidence I find that Mrs. Lasenby was dismissed for cause, totally unrelated to the purposefully open and provocative union activity in which she engaged to protect and guarantee her continued employment."

7159-63-U: A.H. Davidson, Representative of The Bricklayers, Masons and Plasterers International Union of America, Local No. 3 Guelph, Ontario (Complainant) v. Dunker Construction Limited (Respondent).

7255-63-U: Lumber & Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters & Joiners of America (Complainant) v. Chukuni Lumber Company Limited (Respondent).

7309-63-U: Lumber & Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters & Joiners of America (Complainant) v. Chukuni Lumber Company Limited (Respondent).

7310-63-U: Lumber & Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters and Joiners of America (Complainant) v. Chukuni Lumber Company Limited (Respondent).

7328-63-U: Sheet Metal Workers' International Association Local Union 568 (Complainant) v. Dumont Aluminum Limited (Hamilton) (Respondent).

7351-63-U: Sign & Pictorial Local 1630 of the Brotherhood of Painters, Decorators and Paperhangers of America (Complainant) v. Steel Art Company Ltd. (Respondent).

7407-63-U: International Holders and Allied Workers Union AFL.CIO.CLC and its Local 728 (Toronto) (Complainant) v. Fairbank Foundry Company (Respondent).

7419-63-U: United Steelworkers of America (Complainant) v. Sudbury Ornamental Iron Workers Ltd. (Respondent).

7436-63-U: United Steelworkers of America (Complainant) v. C & R Metal Products Limited (Respondent).

7451-63-U: United Electrical, Radio & Machine Workers of America (UE) (Complainant) v. Delta Electronics Limited (Respondent).

7488-63-U: Building Service Employees' International Union, Local 268 (Complainant) v. Sault Ste. Marie General Hospital (Respondent).

The Board endorsed the Record as follows:

"The complainant having failed to appear and adduce evidence, this complaint is accordingly dismissed." (Signed) [Signature]

7514-63-U: International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Local 419, Warehousemen and Miscellaneous Drivers (Complainant) v. United Farms Owned and Operated by Fairway Produce Co. Ltd. (Respondent).

7548-63-U: United Steelworkers of America (Complainant) v. C & R Metal Products Limited (Respondent).

7551-63-U: Anton F. Gutsfeld (Complainant) v. International Harvester Company (Hamilton Works) (Respondent).

The Board endorsed the Record as follows:

"On January 4, 1963, the present complainant filed a complaint under section 65 of The Labour Relations Act in which he alleged that he was dealt with by the respondents named therein contrary to sections 10, 59 and 65 of the Act. It subsequently became apparent that the

complainant had intended to base his claim in part on an alleged infringement of section 59a, rather than 59 as set out in the complaint; the complaint was in fact dealt with by the Board as if it had referred to section 59a, rather than section 59. A field officer was appointed and authorized to inquire into the complaint. After considering the report of the field officer, the Board determined that a hearing should be held 'for the purpose of entertaining submissions as to whether the allegations made by the complainant, if established by evidence, would constitute grounds for relief under section 65 of The Labour Relations Act'. At the hearing, which was held on February 25, 1963, before a division of the Board consisting of J. Finkelman, Chairman, and Board Members G. Russell Harvey and H. F. Irwin, the fullest opportunity was afforded to the complainant to present argument to show that he was entitled to the relief he sought. In a decision issued on March 6, 1963, the Board gave its reasons for dismissing the complaint.

The complainant has now filed a new complaint in which he again seeks relief under section 65 of the Act and claims that he has been dealt with by the same respondents as were involved in the previous complaint contrary to sections 50, 65 and 10 of The Labour Relations Act. The statement of the nature of the acts and omissions complained of is, in all essential respects, identical with what was alleged in the previous complaint referred to above. There is nothing in the complaint that is now filed that was not dealt with in the previous decision, except that the complainant now alleges that the acts or omissions complained of also constitute a violation of section 50 of The Labour Relations Act, whereas formerly he had complained that they constituted a violation of section 59a. However that may be, the statement of the nature of the acts or omissions complained of as set out in the application do not differ in any material respect from those that were set out in the previous complaint. In effect, the complaint is that the course of conduct previously complained of has continued down to the present time. Although he now seeks to base his complaint in part on section 50, rather than section 59a, there is nothing of the complaint

that would bring the conduct complained of within the purview of the first mentioned section. The reasons given in our decision of March 6, 1963 dismissing the earlier complaint apply to the new complaint as well. The instant complaint is therefore dismissed under section 45 of the Board's Rules of Procedure. As we pointed out in our earlier decision, section 10 of The Labour Relations Act has no relevance to a claim under section 65 and, even if there were evidence of discrimination against the complainant because of his nationality, his remedy would lie under other legislation and before another tribunal. We also pointed out in that decision that we expressed no opinion 'on the question as to whether the complainant may have a remedy for the injuries he claims to have suffered against anyone in any other forum. That is a matter that lies outside the jurisdiction of this Board'.

While this conclusion disposes of the complaint, we feel called upon to deal specifically with one statement that appears in the complaint. The statement is as follows: 'on February the 25th 63. the Union representatives also had served the Board with an untrue statement. so the report of the investigating Field Officer has not been used.' The fact is that, although statements were made by the two respondents to the field officer appointed on the previous complaint, the hearing held on February 25, 1963 was in the nature of a show cause hearing and, in arriving at its conclusion, these statements were not considered by the Board in determining whether the complainant had made out a case for further inquiry by the Board. We pointed out to the complainant at that time that, for the purpose of that hearing and for that purpose alone, we were prepared to assume that all the facts he alleged were true. We then asked him to address himself to the question as to whether such facts would constitute grounds for relief under section 65 of the Act. The complainant was afforded full opportunity to present his argument which he did at considerable length. After considering the arguments advanced by the complainant as well as by the respondents, we concluded that, if we were to assume in his favour that every allegation of fact he had made had been

established by evidence, nevertheless he had not made out a case for relief under The Labour Relations Act. In short, the statements made by the respondents to the field officer did not enter into our consideration of the case at that stage at all. It follows that we are not called upon now to express any opinion as to the validity of the complainant's allegations concerning the truth of the statements made by the 'Union representatives' to the field officer in connection with the earlier complaint."

CERTIFICATION INDEXED ENDORSEMENTS

5442-62-R: United Steelworkers of America (Applicant)
v. Air Liquide (Respondent). (GRANTED UNIT 1 JANUARY 1964).

The Board endorsed the Record in part as follows:

"The respondent submits that this application for certification should be dismissed because Charles Rowe, a person who exercises managerial functions, supported the applicant in its attempt to organize some of the employees of the respondent by giving verbal support to the applicant, by speaking favourably of the applicant and by encouraging employees to join the applicant. The respondent takes the position that such support is contrary to The Labour Relations Act and disqualifies the applicant under the provisions of section 10 of the Act. In support of its position, the respondent referred the Board to the McCarthy Milling Company Limited Case, C.C.H. Canadian Labour Law Reporter, Transfer Binder 1949-54, ¶17,070; 1954 C.L.S. Vol. 2,76-424, and Swift Canadian Co. Limited Case, C.C.H. Canadian Labour Law Reporter, Transfer Binder 1949-54, ¶17,071; 1954 C.L.S. Vol. 2, 76-425.

Although it was ultimately agreed by the parties that Rowe should be excluded from the bargaining unit, there was at the time this application was made considerable confusion with respect to his status, the nature of which is set out below. At the first hearing, the respondent sought Rowe's exclusion from the bargaining unit. The Board appointed an examiner to inquire into his duties and responsibilities, but no report

as to his duties and responsibilities was submitted by the examiner because, following the inquiry, the applicant agreed that Rowe should be excluded from the bargaining unit.

Subsequently, at a hearing held to inquire into the allegations referred to above, the nature and extent of Rowe's duties and responsibilities were placed in issue by the respondent. The respondent called no members of management to testify as to the nature and extent of Rowe's duties and responsibilities, but it did call a number of rank and file employees, including three of the six persons who worked in the office with Rowe. The picture of what Rowe did and the extent of his authority is therefore that presented by the respondent company itself. According to one of these witnesses, Bright, Rowe did not regard himself as a member of management. He told Bright that he had joined the Union and that he would be a member of the Union's bargaining committee. Bright further testified that Rowe was acting office manager and that Rowe had been told by the Hamilton Office of the respondent that he was not the office manager yet. Another employee, Geelen, testified that Rowe was the head accountant and 'could not fire me'. A third employee, Blake, testified that he did not know Rowe's position. He further testified that Rowe had been an assistant accountant but after the office manager Biggs was injured, Rowe took over a part of Biggs's work and occupied his office. Kuchta testified that Rowe was assistant office manager and in the absence of Biggs was acting office manager. Stokes testified that Rowe was acting office manager. In short, Rowe had authority to direct the work of other employees, but subject to the authority of two other persons on a higher level of management, in an office that consisted of some half-dozen persons. While he was performing some of the functions of the former office manager, his status with the respondent would not be determined until the respondent ascertained whether Biggs would return to work. Taking the evidence as a whole, we are impelled to find that, at the relevant time, Rowe's position was 'up in the air'. In these circumstances, we are unable to understand how our colleague can infer that Rowe had power to fire or that he had all the

customary powers of management. As a matter of fact, the only evidence before us on these points, and it is the evidence submitted by the respondent itself, is to the contrary.

The proposition that management's support of a trade union vitiates the union's claim to represent the employees is found on the fact that employees are aware that an employer holds the power of 'life and death' over employees with respect to their employment. It is for that reason that any interference with or support of a trade union rendered by an employer in representation matters is viewed with suspicion. The responsive nature of an employer's relationship with his employees and the latter's natural desire to appear to identify himself with the interests and wishes of his employer are discussed at length in the Pigott Lictors (1961) Limited Case, C.C.H. Canadian Labour Law Reporter ¶16,264 and in the Peel Block Limited Case, C.C.H. Canadian Labour Law Reporter ¶16,277.

When we come to discuss how Rowe's activities fit into the picture, we find that, on the facts, this case is distinguishable from the facts in the two cases just referred to. We have, first of all, the confusion in the minds of the employees about Rowe's actual status. However, what is more important, is that the employees were aware that anything Rowe did with regard to the Union was done by him not in support of, but contrary to the interests of, the employer. He had become dissatisfied with the respondent because of pressure from the Hamilton Office and because he was not confirmed as office manager. This dissatisfaction and the cause of it were common knowledge among the employees, and they were fully cognizant of the fact that, in supporting the Union, he was acting to advance his own personal interest and that he was acting against the interest of the employer. Indeed, they were obviously aware that, if he tried to exert any influence on them by virtue of any managerial authority he may have had, they could easily expose him to other persons in management without fear of reprisal. In other words, they would not be oppressed by the belief that their employment would be jeopardized if they repulsed any efforts he

might make to induce them to join the Union. Indeed, it was obvious to the employees that by joining the Union they might share with Rowe their employer's displeasure and accordingly were expressing their own wishes and not merely reflecting the wishes of their employer.

As the Board said in the Link Manufacturing Company Case, (1953) Board File No. 4682-53, it is the influence of a person who possesses power to affect the employment status of an employee that is material to a consideration as to what weight should be given to evidence of membership in or opposition to a trade union.

There is no evidence to support a conclusion, as was suggested by counsel for the applicant, that Rowe connived with the Union to bring it into the plant. There is no evidence before us to warrant a finding that he initiated the campaign to organize the employees or that he 'signed up' any employees. Indeed, an examination of the union membership cards discloses that the person who signed up the employees was a person other than Rowe. It is not without interest to note, in weighing the influence that Rowe had with the employees, that when he asked Bright to take certain membership cards to the union office, Bright refused to do so.

While it is also clear that many of the respondent's employees were aware of Rowe's support of the union, there is no evidence (other than the fact of his membership) that the union was aware of his activities prior to the terminal date of this application, i.e. after all the evidence of the desire of the employees, which is the evidence upon which the Board must make its decision in accordance with the provisions of section 7 (2) of the Act, was on file with the Board. (See Minit Car Wash Case, O.L.R.B. Monthly Report, January, 1960, p. 351).

Our colleague in his dissent refers to evidence about the attendance of Rowe at the office of the union. In addition, our colleague stated that Rowe had conversations about joining the union at the union office. While such attendances at the union office lends colour to our colleague's finding that the union

was or ought to have been aware of Rowe's activities on its behalf, he fails to point out, and the evidence on this point is clear and uncontradicted, that all of Rowe attendances took place after the first hearing by the Board in Toronto and that therefore such visits to the union office could not possibly have affected the quality of the applicant's evidence of membership.

Let us consider whether the fact that Rowe supported the Union prevents the union from being certified because of the provisions of section 10 of the Act. Rowe by his support was obviously attempting to align himself with the interests of the employees in the bargaining unit against the management of the respondent, and his activities in the circumstances of this case being contrary to the wishes and interests of management, can be characterized as anti-management. It logically follows that his activities which were anti-management cannot be considered activities of his employer. We are impelled to find that his activities were not activities of the employer which, under section 10 of the Act, would prohibit certification of the applicant.

If we were to find otherwise, it would be open to an employer to frustrate the wishes of the employees by injecting himself into the situation. This could not have been contemplated by the legislature. Otherwise, an employer could do indirectly what he could not do directly. This was recognized by the Board in the Deacon Brothers Ltd. Case, C.C.H. Canadian Labour Law Reporter, Transfer Binder 1944-1947, ¶10,412, wherein the Board stated: 'The fact that an employer has engaged in activities which are forbidden by the Regulation will not in every case necessarily bar a trade union or employees' organization on his initiative. If the organization has not solicited or invited that support, we should hesitate to condemn the organization because it failed to repudiate the employer, although no doubt we should be inclined to scrutinize the affairs of such an organization rather closely to satisfy ourselves that there has in fact been no solicitation.' It is our opinion that the support rendered by Rowe was not, as we have found, solicited by the union

in the circumstances of this case.

It is to be noted that section 10 of the Act is more restricted in its scope than section 48. The former refers to activities by 'an employer or employers' organization'; the latter refers to activities by 'an employer or employers' organization' and a 'person acting on behalf of an employer or an employers' organization'. In the instant case, it would be ludicrous to suggest that Rowe was supporting the applicant at the behest of the employer or to advance the interests of the employer, or even that there was a real possibility that the employees thought so. Rowe was truly on a frolic of his own, attempting to advance his personal interests, in opposition and in disregard to the interests of the respondent, and this fact was recognized by all of the employees.

The facts in the instant case in our view are distinguishable from the facts in the McCarthy Milling Company Limited Case and the Swift Canadian Co. Ltd. Case referred to above. In both of those cases, a member of management 'signed up' the employees involved, and the Board in those cases was not prepared to accept documentary evidence procured by such a person as valid evidence of membership in the applicant union. There is no evidence in those cases that the signing up of the employees was contrary to the wishes of the employer. In the instant case, however, Rowe did not sign up employees of the respondent and it is abundantly clear that all his activities in support of the respondent were in fact contrary to the wishes of the respondent as is now evidenced by its vigorous opposition to this application.

Counsel for the respondent acknowledged that if Rowe's activities, of which the respondent now complains, had been directed by the respondent, the respondent could not now be heard to complain about such activities. We are at a loss to understand, in view of this argument, how he could now be heard to complain about activities which, as he says, the respondent did not direct.

In all the circumstances of this case, the Board is satisfied in the absence of objections from any of the employees of the respondent that the support rendered to the applicant by Rowe does not weaken the evidence of membership of the applicant, nor is the applicant's status as a trade union capable of being certified as bargaining agent impaired by such assistance.

The Board finds that all office and clerical employees of the respondent at London, save and except office manager, persons above the rank of office manager, outside salesmen, confidential secretary to the sales manager and students hired for the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining (hereinafter referred to as bargaining unit #1).

The Board notes the agreement of the parties that persons classified by the respondent as technical personnel, assistant sales manager and driver salesmen are not included in bargaining unit #1, and that persons classified by the respondent as sales order clerks and shipper are included in bargaining unit #1.

A certificate will issue to the applicant with respect to the employees of the respondent in bargaining unit #1."

Board Member H. F. Irwin dissented and said:

"I dissent.

There is in evidence certain facts which have not been challenged or refuted. Charles Rowe, office manager of the company's London office, actively engaged in the organization of the employees under his supervision by zealously soliciting membership in the applicant union on the company's time and premises; attending the union's office himself and directing employees to attend the union office; and generally taking part in the union's organizational campaign. Indeed, not only did he take part in it, he was the driving force behind it.

Following a business trip to the company's Hamilton office, Rowe unknown to the company decided to actively assist the union to organize the employees. It is evident that Rowe believed he would be represented by the union, if and when it was certified. The evidence establishes that Rowe had many conversations with employees about joining the union. Such conversations took place in Rowe's office, at other places on the company's premises, and at the offices of the union.

At the Board hearing held in London on June 7th, 1963, the respondent called five of the company's employees as witnesses. They testified concerning Rowe's conversations and union activities as follows:-

William Bright stated that he had been employed by the company for 2 years. Rowe had held numerous conversations with him regarding the union. Most of them took place in Rowe's office or elsewhere on the company's premises.

Bright stated that his vacation commenced on Monday, February 11th. A few days later, Rowe called him on the telephone and asked him to come into the office. Rowe said the union wanted Bright to take the cards down to the union office. Bright saw Rowe later and Rowe asked him to take the cards down. Rowe stated to him that pressure was being put on by the Hamilton office and Bright was to watch himself. Rowe also stated that 'the union is the only way we (the employees) could fight back', and that the Hamilton office was not satisfied with Blake's (another employee) work and there was some complaint about Bright's work. Bright stated he had received no direct complaints from the Hamilton office. Rowe stated to Bright that he didn't like unions but there was no other choice.

In cross examination, Bright stated to counsel for the applicant that Rowe told him that at one time he (Rowe) would be included in the union bargaining and was meeting with the union prior to the application for certification being made. He stated that he was governed by what Rowe said rather than what the others did. Rowe told him that the other employees had joined the union.

Peter Geelen, the second witness, stated he was a driver salesman and had been an employee for one year. He said he knew Rowe as the head accountant and he had several conversations with Rowe about the union. About the 13th of 14th of February, Rowe asked him to sign a union card. Rowe stated that everyone wanted the union; that we wouldn't get anywhere without the union; and no one was sure of his job any more. Rowe said he had a letter from the Hamilton office regarding the one man and that 'everyone had joined except me'. Geelen stated that he understood the only thing to do was to join the union. He also stated that he was in the union's office when Rowe was there along with other employees of the company. He stated that Rowe participated in the discussions and it was his understanding that everyone had joined up. This was after February 14th, as he didn't think he went to the union office before February 14th.

In response to a question by Board Member Archer, Geelen stated that Rowe said the only way to have security at Liquid Aire was to join the union. 'Rowe told me I was going to get a card and he wanted me to sign it.'

Edward Blake, the third witness, stated he was shipper and stockkeeper and had been an employee for 15 years and considered Rowe to be his boss.

He stated that he had several discussions with Rowe about the union. The first time was the first part of this year. Rowe thought the union was OK. There were a number of persons present. Rowe informed him about others signing. Blake also went to the union office following the Board hearing in Toronto.

Frank Kuchta, the fourth witness, stated he was a sales clerk and had been an employee for $4\frac{1}{2}$ years. He said he knew Charles Rowe who was office manager or assistant office manager.

He stated he first discussed union early in February. It was after 5 p.m. in the street. Rowe was there along with three other employees. It was said the union was being formed. He was

asked if he wanted to join. He further stated that he also was at the union office one night after the Board hearing in Toronto and Rowe was there, too.

Eugene Stokes, the firth witness, stated he was a relief driver salesman and had been an employee for $4\frac{1}{2}$ years. He knew Charles Rowe as office manager.

He testified that he had discussed the union, with Rowe. It was perhaps a week before the application for certification was filed. He went to Rowe and Rowe spoke favourably of it.

He stated that he had been at the union hall 3 or 4 times and Rowe was present on some occasions.

On the basis of the evidence of these employees, it is clear that Rowe initiated discussions about joining the union and participated in discussions in which he spoke favourably about joining the union. These discussions took place not only at the company premises but at the union hall. Rowe asked employees to join the union and informed them that they would be receiving membership cards and, in addition, advised them to take such cards to the union hall. During such discussions, the employees were advised by Rowe to the effect that the London office employees would not get anywhere without the union and the only way to 'get back' was to join the union. Also during such discussions, the employees' job security with the company was discussed with the result that Rowe was advocating employees joining the union in order to protect their jobs and advance their working conditions. The majority decision relies on the fact that Rowe did not actually 'sign the employees up', that is, he did not sign their application cards as having witnessed their signatures being placed on them. In the light of all the evidence, for the Board to rely on the thin proposition that since Rowe did not actually 'sign the employees up' there was no unlawful participation by Rowe in the formation of the union is to adopt an interpretation that would defeat the whole purpose of the relative sections of the Act prohibiting such participation by management. The majority

also stated that they were not satisfied that Rowe initiated the applicant's attempts to organize the employees by introducing the applicant into the respondent's plant. Although the applicant may not have solicited the support of Rowe, the applicant union most certainly accepted and endorsed his entire conduct and participation in the organizational campaign.

It must be noted also that Rowe as office manager had all the customary powers of a member of management. Although at the first hearing, the union urged that Rowe should be included in the bargaining unit, subsequently it changed its position and agreed to his exclusion as a member of management after the appointment of an examiner and before the examiner's report was submitted to the Board. Acting upon the agreement of the parties pertaining to his management functions, the Board excluded Rowe from the bargaining unit.

There were two sections of the Act that are pertinent - Section 10 provides -

The Board shall not certify a trade union if any employer or an employers' organization has participated in its formation or administration or had contributed financial or other support to it or if it discriminates against any person because of his race, creed, colour, nationality, ancestry or place or origin.

Section 48 provides -

No employer or employers' organization and no person acting on behalf of any employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of his freedom to express his views so long as he does not use coercion, intimidation, threats, promises or undue influence.

Section 48 is a more general section. It provides that it is an unfair labour practice

for employers to participate or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or to contribute financial or other support to a trade union. Charles Rowe's actions constitute a flagrant breach of this section. He did everything the section prohibits.

Section 10 is more specific in application. It directs the Board what it must do. It permits no discretion or divergence. It prohibits the Board from certifying a trade union if an employer has participated in its formation or administration, or has contributed financial or other support to it. The office manager, Charles Rowe, not only assisted the union, but was the main organizer of the employees on the union's behalf. It is hard to visualize how he could have taken a greater part in the organization of the employees under his supervision. He did everything within his power to get the employees to join the union.

In as much as Rowe's actions constitute an unfair labour practice and clearly fall within the conduct prohibited by Sections 10 and 48, the Board has no alternative but to comply with the legislation and dismiss the application. To do otherwise, constitutes a failure to properly exercise the Board's jurisdiction and a failure to comply with clear and precise legislation.

The employees were approached and solicited to join the union by Rowe, their immediate superior, who was a member of management and who apparently wanted the union for his own selfish purposes. Rowe was a person with power to hire, dismiss, discipline and make confidential reports about them; who assigned them work and who would be consulted on their hours, wages and other working conditions.

Section 3 of the Act provides that - "Every person is free to join a trade union of his own choice and to participate in its lawful activities" - What a mockery this becomes if the Board certifies this union on evidence of membership obtained under the above circumstances.

The combination of the office manager and the union on this joint-venture surely and effectively silences any employees who might have wished to oppose the union, or to select another union. It seems obvious that the employees have been deprived of a freedom that the Act guarantees to every employee in Ontario.

The employees knew Rowe's status and it must be assumed that the union knew Rowe's status. At the first hearing, the union urged his inclusion in the bargaining unit. A union must comply with the Act, just as employers. In permitting such a management person to act as their main organizer, the union does so at its own peril and rightly so.

In similar circumstances in the past, this Board has refused to certify a trade union where a member of management has participated in or interfered with its formation or administration - See Swifts Canadian Co. Ltd., and McCarthy Milling Company Ltd. Both these decisions were made in January 1954. In both cases some of the employees were 'signed up' in the union by a foreman. In dismissing the applications the Board did not rely upon section 10 of the Labour Relations Act but instead relied upon section 45, now section 48, and held - 'We are not prepared to accept documentary evidence procured in part by such a person as valid evidence of membership in the applicant'. In these circumstances, I fail to understand the distinction which the majority have made with respect to the difference between sections 10 and 48.

I also fail to understand why, in the instant case the majority have not adopted the same principles and philosophies that the Board has expressed in other cases. For instance, in the Peel Block Company Limited Case, the Board stated:-

It is the purpose and spirit of the Act that when employees embark upon a course of action looking to the selection or rejection of a bargaining agent that they are entitled to choose and act free from the improper influence of their employer. What is always to be determined in this respect are the

true wishes of the employees, not those of the employer who may be seeking to improperly influence them. Attempts by employers to improperly influence or to interfere with the freedom of employees to select or reject a trade union as their collective bargaining agent must always be condemned and discouraged by this Board. It is a function and duty of this Board to be vigilant and scrupulous in its concern to protect the fundamental rights of employees to make their own choice, as distinct from the choice of their employer, on the matter of selecting or rejecting a bargaining agent.

and -

It is not without significance to note that section 10 of The Labour Relations Act expressly prohibits the Board from certifying a trade union if any employer has participated in its formation or administration or has contributed financial or other support to it. It would, in our view, lead to a gross inconsistency in the interpretation of the spirit and intent of the legislation to hold that while the legislation expressly prohibits the Board from certifying a trade union which has received the support of an employer, that, on the other hand, the Board should accept a petition in opposition to a trade union where such petition has received the assistance of the employer to the extent revealed by the evidence in the instant case.

(emphasis added)

These quotations are made in connection with the opposition of employees to a union, but surely the same principles must pertain to the facts before us in this case.

In the Piggott Motors (1961) Limited Case (C.C.H. Canadian Labour Law Reporter, Vol. 1, ¶16,264 at pp. 13,281 and 13,282) the Board stated:

In view of the responsive nature of his relationship with his employer, and of his natural desire to want to appear to identify himself with the interests and

wishes of his employer, an employee is obviously peculiarly vulnerable to influences, obvious and devious, which may operate to impair or destroy the free exercise of his rights under the Act.

On the basis of these decisions and the principles expressed therein, I cannot agree to any divergence from them. To do so, would be to ignore the evidence before us and to fail to exercise the jurisdiction which the Act requires. This is not a situation where the office manager was authorized to assist the union - far from it. The company had no knowledge of Rowe's activities. The majority have relied upon the principle that an employer could not do indirectly what he could not do directly. There is not one scintilla of evidence to suggest that Rowe was authorized by the company to take part in the organization campaign. It was neither in his direct or implied authority to involve himself in activities which are prohibited under the Act. It is well established that Rowe used his position as office manager and his control over employees to advance the union's position by urging the employees to join the union. In doing so, he not only committed an unfair labour practice - but even more important, he effectively deprived employees of their freedom

and rights guaranteed by the legislation.

These are the same freedoms and rights which this Board has so meticulously spelled out in its decisions (*supra*) and so strenuously upheld in the past.

For these reasons, I would have dismissed the application."

On January 28, 1964 the Board further endorsed the Record as follows:

"The applicant herein was certified as bargaining agent for a group of employees of the respondent on the 9th day of January 1964.

On the 22nd and 24th days of January 1964 the Board received letters from a group of employees of the respondent purporting to represent one hundred per cent of the employees included in the bargaining unit represented by the applicant in this matter, wherein the employees asked the Board to reconsider its decision dated January 9th, 1964 on the grounds that they no longer wished to be represented by the applicant trade union.

Having regard to the provisions of section 50 of the Board's Rules of Procedure and for the reasons given by the Board in its decision in the Permanent Transit Mix Concrete Limited, C.C.H. Canadian Labour Law Reporter 1955-59, ¶16,138; C.L.S. 76-644, the Board does not deem it advisable to reconsider its decision of January 9th, 1964 in this matter and the request of the employees is therefore dismissed."

6825-63-R: United Brotherhood of Carpenters & Joiners of America Local Union 1487 affiliated with the Carpenters District Council of Toronto and Vicinity (Applicant) v. The Foundation Company of Canada Limited (Respondent) v. International Union of Operating Engineers Local 793 (Intervener) v. International Hod Carriers' Building and Common Labourers Union of America, Local Union #183 (Intervener). (DISMISSED JANUARY 1964).

The Board endorsed the Record as follows:

"The applicant, the United Brotherhood of Carpenters & Joiners of America, Local Union 1487, is seeking certification for all pile drivers in the employ of the respondent working within a 25 mile radius from the Toronto City Hall plus a further area not here material. On the date of the making of the application the only employees of the respondent who were or might be affected were employed on subway construction in the City of Toronto.

The respondent, The Foundation Company of Canada Limited, and intervener #2, International Hod Carriers' Building and Common Labourers Union of America, Local Union 183, take the position that the application is untimely. In support thereof they rely on a collective agreement made and entered into on the 31st day of May, 1963, between intervener #2 and a number of contractors, one of which is the respondent. If the employees affected by the application are bound by the said agreement then it is clear that the application is untimely under The Labour Relations Act. The first issue, therefore, is what employees are bound by the said agreement.

In addition to the report of the examiner, dated October 1st, 1963 and the supplementary report of the examiner dated October 23rd, 1963, the Board heard a substantial amount of

direct evidence adduced by the parties. Part of this evidence was directed to the preliminary issue referred to above.

This application affects employees of the respondent engaged in pile driving and associated operations in connection with subway construction work in the City of Toronto. The Board heard a good deal of evidence respecting the varied operations associated with pile driving and the different types of piles in use. It is clear from the evidence that the pile driving work being performed by the respondent on the dates material to this application was of a restricted nature. The operation involves the loading, unloading and placing of "soldier" piles in pre-bored holes which are then filled with low-strength concrete. There is no driving of piles as such. After the placing of the piles is completed, excavation proceeds, piles are exposed and the spaces between piles are filled with horizontal timber lagging, the function of which is to transfer load of the soil retained behind it to the soldier piles.

As the excavation proceeds, structural steel struts are installed between individual piles on the opposite sides of the cut, and these struts are anchored by welding. The function of the struts is to prevent movement of the soldier piles and to brace them. The struts themselves are braced vertically and horizontally from set to set and from layer to layer. The bracing consists of light steel members which are welded in place and of timbers which are wedged in place.

After this is completed the concrete structure (of the subway) is commenced. When this work is done, back filling is

carried out to within four feet of the existing grade. The lagging is removed and the soldier piles burned off to that level. The balance of the soldier piles and the lagging stays in place.

It is apparent from this description of the work that the function of the "soldier" pile on this job is the retention of earth and the operations associated with the soldier pile, whether before or after its placement, are all directly or indirectly connected with the same function. In other words, the work associated with pile driving in this case is essentially that of shoring or revetting trenches or open cuts.

Let us now turn to the "work jurisdiction" covered by the collective agreement. That jurisdiction, by Article 6, embraces all employees employed as labourers as per schedule "A". Schedule "A" divides labourers into three classes - common, carpenters' and classified labourers. Classified labourers are in turn defined at great length and include "Sheeting and Shoring Man, Timberman ... Signalman ... All Machine Driven Tools by gas, electric and air in open cut work, Steel Sheet Piling ..." In our view, the last two classifications must be read as meaning employees operating machine driven tools etc. or engaged in steel sheet piling.

In view of the fact that the only employees of the respondent, on the date of the making of the application engaged in pile driving operations in the area sought by the applicant, were the employees on the subway, it is not necessary in this case to consider whether the collective agreement covers work other than that being performed at that time. When we consider the nature of the work being performed, we are driven to the conclusion that the language of the collective agreement was intended to and does in fact cover the employees engaged in those particular pile driving operations.

While we do not intend to review all the evidence in detail, we think it advisable to indicate some of the factors which have influenced our thinking in this matter. For example, it is clear that the work involved in this case is not of such a kind that in the past has been restricted to the members of any one particular union. The evidence clearly establishes that labourers can and do perform the work. In fact, the unchallenged evidence of Reilly establishes that another company signatory to the agreement with which we are here concerned used members of intervener #2 to perform the work in connection with its pile driving operations at a site covered by the said agreement.

Nor can we overlook the fact that the collective agreement does distinguish common and classified labourers and some meaning must be attributed to the words, quoted above, following classified labourers. While the applicant argued that the words ought not to be construed to cover the operations in question, it did not suggest any other meaning that should or could be attributed to them.

However, it is clear from the evidence that even the work performed by "common labourers" would include some of the phases of the pile driving operations which the applicant says are performed by "pile Drivers" as it uses that term in this application. And in our view, the same is true with respect to the other classifications. Thus for example, some of the work involves the use of a number of machine-driven tools. Again it is clear that signalmen are used in the operation, and in that regard the evidence of Ellis is most instructive. He refers to himself as a signalman with the crane and his statements about his duties confirm the interpretation which the witness Reilly placed on the term "Signalman".

Of greater significance perhaps so far as this application is concerned are the terms "Sheeting and Shoring Man, Timberman and Steel Sheet Piling". Steel Sheet piling, according to the evidence of the expert witnesses called

by the applicant (and concurred in by the other experts) "is used to hold back earth and/or water e.g. docks, walls, excavations in earth or in under-water excavations when it functions as a cofferdam."

While steel sheet piling was in use on the job site involved in the present application, viewed in the light of the function of the work actually being performed, the terms "sheeting and shoring man" and "lumberman", the evidence supporting the fact that sheeting and shoring men and lumbermen perform a number of operations involved in the pile driving process, we are satisfied that the language of the collective agreement is intended to and does in fact cover pile driving operations associated with the retaining of earth and water. On the plain meaning of these words, as well as in the light of the evidence before us, we can see no way in which we can, as the applicant submits we should, "sensibly delimit" the language of the agreement to exclude at least these operations. As we pointed out above, whether that language embraces all aspects of the pile driving process, is unnecessary for us to decide in this case.

We have not overlooked the applicant's argument with respect to the employment by the respondent of members of the applicant's union to perform the work. However, it is equally true that intervener #2 did not acquiesce in this position. The fact that the respondent may be in breach of its collective agreement can not prejudice the position of other parties to the agreement.

In so far as the decision in the Evans Lumber and Builders Supply Limited Case (C.C.H. Canadian Labour Law Reporter Transfer Binder 1955-1959, #16,117, C.L.S. 76-612) is concerned, it is clear that all the evidence

before the Board was not spelled out in the Reasons for Decision. The Board predicates its finding with the words "After carefully reviewing all the evidence including the fact that ..." There is nothing to suggest that in the present case there was any evidence similar to the evidence presently before us that one of the parties to the agreement was pressing the other to remedy the situation that existed. This is certainly a material factor in considering the intention of the parties. While under the Evans Lumber Case the fact that wages and other working conditions of the employees are not covered by the collective agreement is a factor to be considered, in the light of all the other evidence before us, including the agreement itself, we are unable to attach much significance to this point in the present case.

In the result, therefore, we find that the collective agreement dated May 31st, 1963, between the respondent and intervener #2 is binding on the employees affected by this application and it must therefore be dismissed as untimely under the provisions of The Labour Relations Act.

For the purposes of clarity, we deem it advisable to point out that our decision in no way constitutes a finding that any one particular union is entitled solely and exclusively to bargain for employees engaged in pile driving operations of the kind involved in this application. In any event, this is clearly not a function of this Board. Again, the decision in no way purports to define what would constitute an appropriate unit or units of employees engaged in pile driving. This is a matter which will have to await decisions in future cases.

Finally, we are not making any finding with regard to the two carpenters shown on the respondent's list. In the first place, the applicant is not seeking their inclusion in the bargaining unit. Secondly, the applicant do not in any event have the

requisite membership among the carpenters to entitle it to a representation vote.

The application is dismissed."

7350-63-R: United Brotherhood of Carpenters & Joiners of America (Applicant) v. Standard Prestressed Structures Limited (Respondent) v. International Hod Carriers Building and Common Labourers Union of America, Local #506 (Intervener). (DISMISSED JANUARY 1964).

The Board endorsed the Record as follows:

"The applicant has applied for certification for all carpenters and carpenters apprentices of the respondent save and except non-working foremen and persons above that rank in Lincoln, Welland and Haldimand counties.

Both the respondent company and the intervening trade union, International Hod Carriers' Building and Common Labourers' Union of America, contend that the application is untimely by reason of a collective agreement between the intervener and the Canadian Prestressed Concrete Institute (Ontario Chapter) and its members, dated July 18th, 1963. The respondent is a member of the Institute. There is no question that if the collective agreement covers the carpenters affected by this application, then the application is untimely.

By article 2.01 of the agreement the respondent recognizes the intervener "as the sole collective bargaining agent for its employees engaged on all construction projects throughout the Province of Ontario", with certain exceptions not here material. Prima facie, therefore, the agreement covers the employees affected by this application.

The agreement (in Article 111) contains a closed shop clause with a right reserved to the employer to engage from other sources if the union is unable to supply the required men, providing employees so obtained become members of the union within 15 days. Furthermore, by article 4.02 the employer may in

certain circumstances employ "key personnel and composite crews ... with the understanding that said key personnel or composite crews are members in good standing of the Building and Construction Industry Unions..."

It was under this clause that the carpenters were hired. Does this clause create an exception to the clearly worded language of article 2.01 that the employer recognizes the union as the sole collective bargaining agent for its employees?

It is clear that the regular employees of the respondent do the work that was being performed by the carpenters in question. The only reason the carpenters were hired was the fact that the respondent's regular crew was otherwise engaged, and as soon as men became available, they were sent to the job site to replace the carpenters. It is also clear that the regular employees are not carpenters by trade. In addition to this, we cannot ignore the well-recognized distinction between an all employee unit and a craft unit. This Board makes the distinction daily. The intervening union normally bargains for construction labourers and has numerous collective agreements covering only construction labourers. Both the respondent and the intervener vigorously contend that the agreement was intended to cover all employees of the respondent regardless of how they were hired. The applicant had no argument on this issue other than to point out that its members, i.e. carpenters, did the kind of work that the employees affected by this application were hired to do.

It is argued however by our colleague, Board member Harvey, that when the agreement is scrutinized as a whole, it could not have been within the contemplation of the parties to the agreement that persons hired under article 4.02 were to be bound by the agreement. This view, as we understand it, is based on the provisions of article 2.02 and Article V. Article 2.02 provides that the agreement shall apply to all sub-contractors employing labourers.

Article V, which deals with Wages, Hours and Working Conditions, is said to be restricted to labourers. Thus, it is argued, while the agreement covers all employees supplied by the intervener or any labourers hired by the employer, it could not have been intended that the agreement apply to other tradesmen hired under article 4.02. In answer to this the respondent and intervener point to Article V (A) which provides:

Wages, rates, hours of work and working conditions for the duration of this Agreement shall be determined in the following manner:-

(A) By local Unions' established agreements under whose jurisdiction the Company may be working during the term of this Agreement.

The parties to the agreement argue that "local union's established agreements" refers not only to local unions of the intervener but local unions of other trade unions as well. In other words, the wages, rates, hours of work, etc. of the carpenters in this case would be determined by reference to the local carpenters' agreement in the area. We would not disagree that Article V (A) may be open to another interpretation. However, there is no doubt that apart from the articles referred to above, and possibly Article 111, dealing with union security, the other provisions of the agreement could apply to the carpenters in this case.

After reviewing all the facts, arguments and representations as outlined above, we are satisfied that the agreement is, on its face, open to the interpretation that it was intended to cover the employees affected by this application. The parties to the agreement take the unequivocal position that this was their intention. They have taken this position knowing full well that they may be faced with some difficult industrial relations problems. In these circumstances, there is a heavy onus on a person not a party to the collective

agreement to satisfy the Board that the agreement should bear a different construction. In our view, that onus has not been met in this case. Even if Article V (A) were to receive the interpretation placed upon it by our colleague, many of the other terms and conditions of the agreement are applicable to the two persons hired under the terms of article 4.021. Moreover, it is open to the parties to the agreement to negotiate on the hours and working conditions of the carpenters.

In the result, therefore, we find that the collective agreement between the Canadian Prestressed Concrete Institute (Ontario Chapter) and the International Hod Carriers' Building and Common Labourers' Union of America, dated the 18th of July, 1963, covers the employees affected by this application and the application is thus untimely under the provisions of The Labour Relations Act.

The application is dismissed."

Board Member G.R. Harvey said:

"My views are set out in the opinion of the majority, and I see no reason to elaborate thereon."

7376-63-R: United Brotherhood of Carpenters and Joiners of America, Local 1988 (Applicant) v. Tops Marina Motor Hotel (Respondent). (GRANTED JANUARY 1964).

The Board endorsed the Record in part as follows:

"The applicant has filed a duly completed Form 59, Statement on Status of Trade Union, Construction Industry. The Board finds that the applicant is a trade union within the meaning of section 1(1)(j) of The Labour Relations Act.

In this case, Local 1988 of the Carpenters has applied for certification for all carpenters and carpenters apprentices in the employ of the respondent.

The respondent takes the position that it is not an employer within the meaning of section 90(a) of The Labour Relations Act and that therefore the application can not be made under the construction industry sections of the Act.

Section 90(a) provides:

"employer" means a person who operates a business in the construction industry;

Section 1(1)(da) defines construction industry as:

the businesses that are engaged in constructing, altering, decorating, repairing or demolishing buildings, structures, roads, sewers, water or gas mains, pipe lines, tunnels, bridges, canals or other works at the site thereof:

The respondent, Tops Marina Motor Hotel, is a registered partnership consisting of four persons, one of whom is an investor, one a salesman, one a lawyer and one a builder. The partnership was formed for the purpose of building and operating a motor hotel. This is the first venture of the partnership, although individuals in the partnership are interested independently in other motels. The partner who is a builder is presently engaged in supervising the construction of the motor hotel in question. He is doing this without a fee. The partnership employs carpenters and labourers. Part of the work is being sub-contracted. The site of the hotel is Smiths Falls. The partnership has an option on a site in Belleville, and it seems clear that it is the firm intention of the partnership to proceed in the same fashion with respect to this second site, that is, it will build the hotel and then operate it.

This is the first case under the new construction industry sections of The Labour Relations Act in which the scope of section 90(a) of The Labour Relations Act has been argued before the Board. It is unfortunate that the applicant, in effect, failed to present any substantial argument to the Board. When one considers the many different types of ventures which may involve construction work, it is clear that the problem is not an easy one. Indeed, so many situations have presented themselves during the course of argument and while the Board was considering the problem that it seems most unwise in the circumstances of this case to attempt to lay down any final governing principles. Until the Board has gained more experience it should, in our view, confine itself to dealing with each case on its own particular facts.

In the present case, the question is whether on the facts as outlined above, the partnership is "an employer.....who operates a business in the construction industry". It is clear that the work being performed falls within the definition of construction industry. It is equally clear that the partnership is an employer. The problem is thus reduced to a consideration of whether on the facts the respondent falls within the words "who operates a business".

The respondent's argument is that the partnership is engaged in the operation of motor hotels. In the respondent's view, to operate a business in the construction industry, the construction work must be done for other persons and not solely for the employer's own affairs. In the alternative, the respondent contends that it is (1) engaged in building a motor hotel and (2) in operating a motor hotel. The predominant purpose of the venture should be the deciding factor, and in this case the primary or predominant purpose is the operation of the motel.

In advancing his argument counsel for the respondent did not refer to any dictionary definition of the word "business". In the

many definitions of the word found in the Concise Oxford Dictionary, the following appear to be in point:

habitual occupation, profession, trade.

Buying and selling, bargaining, engaged in commerce.

In Chamber's Twentieth Century Dictionary, "business" is defined as follows:

employment, engagement, trade, profession or occupation.

Turning now to counsel's first contention that the construction work must be for persons other than those engaged in the work. While it may be that the definition contained in the Concise Oxford Dictionary, namely, "buying and selling, bargaining, engaged in commerce" to some extent envisages dealing with others, this, in the Board's opinion, is not true of the first definition or of the definition in Chambers. Viewing the definitions as a whole, the Board is not disposed at the present time to place such a general restriction on the word "business" in section 90(a). That does not mean, however, that every person who employs a tradesmen to do construction work is necessarily an employer within the meaning of section 90(a). That person must still operate a business in the construction industry.

This brings the Board to counsel's second argument that the primary or predominant purpose of the operation ought to be the test. The legislation does not use this language, and if that had been the intention of the Legislature, it would have been a simple matter to have said "employer means a person who operates a business primarily in the construction industry" or some similar wording. Furthermore, it seems to the Board that an employer whose primary business is that of manufacturing but who in addition to selling his products to others, operates a construction division for the purpose of

erecting his product at a construction work site, would be excluded automatically from the definition if the test suggested by counsel were to be adopted. Again, the Board is not disposed at the present time to place such a general restriction on the word "business" as it appears in the section.

There remains for consideration, however, the question as to whether the respondent is operating a business in the construction industry. As has already been noted, the respondent's sole activity at the present time is that of constructing a building. In that sense, therefore, its present and sole "profession", "trade", "employment", "engagement", or "occupation" (to take some of the meanings of the word "business") is construction work. However, assuming the present intentions of the partnership are carried through to fulfilment, the partnership will then be engaged in the operation of a motor hotel and in the construction of a second motor hotel. If this turns out to be the case, then in the Board's view the respondent's "profession", "trade", "employment", "engagement", or "occupation" is that of building and operating motor hotels. While it may be that in the long run the respondent will be occupied more with operation than with building, the construction activity is an important and concrete part of its objects. Thus it appears to the Board that whether attention is focused only on the respondent's present activity or on its present activities and future plans, the respondent is operating a business, perhaps not its main business, but nevertheless a business in the construction industry within the meaning of The Labour Relations Act.

Having reached this conclusion the Board emphasizes once again that it is concerned only with the facts of the present case. The question (raised at the hearing) as to whether a manufacturing company which decides to act as its own contractor in building an addition to its existing facilities, falls within section 90(a) is not in issue here and the decision in this case is not intended to provide an answer to that question. However, the

Board thinks it should be made clear that it is not the Board's intention to include in the present bargaining unit, carpenters who may subsequently be employed by the partnership to do ordinary maintenance work once the motor hotel is in operation.

For the foregoing reasons the Board finds that this is an application for certification within the meaning of section 92 of The Labour Relations Act."

7576-63-R: Canadian Construction Workers' Union, Division No. 1, N.C.C.L. (Applicant) v. P.E. Brule Company Limited (Respondent) v. Ottawa - Hull and District Building & Construction Trades Council (Intervener) v. United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Intervener). (GRANTED JANUARY 1964).

The Board endorsed the Record as follows:

"On January 27, 1964 the Board endorsed the Record in part as follows:

"United Brotherhood of Carpenters and Joiners of America, Local Union 93 and Ottawa-Hull and District Building and Construction Trades Council have filed interventions in this matter. Neither claims to represent or to have bargaining rights for employees of the present respondent. While it is true that Local 93 claims to represent employees of another company, P. E. Brule Ltee., and, indeed, has an application for certification pending before the Board, and while it may be true that some of the employees so affected may also, from time to time, be employed by the present respondent, there is no claim, and in fact, no evidence submitted to the Board in the present application, that Local 93 has as members any of the employees affected by this application. Thus even if Local 93 were to be certified for the employees of the other company, that in itself would give the union no rights qua the present employees unless they had membership among those employees. As was noted above, there is no evidence of this and in fact, no such claim.

In so far as the Council is concerned, it does not have individuals as members. Its sole right to intervene would have to be based on bargaining rights flowing from a

collective agreement. This intervener does not allege that it has any collective agreement binding on employees of the respondent or any recently expired collective agreement.

In these circumstances and for the above reasons, the interventions are dismissed pursuant to section 45 of the Board's Rules of Procedure".

TERMINATION INDEXED ENDORSEMENT

REQUEST FOR RECONSIDERATION OF BOARD'S DECISION IN TERMINATION APPLICATION

6833-63-R: A.W. Poulter (Applicant) v. Office Employees International Union, Local 131 (Respondent). (WITHDRAWN SEPTEMBER 1963).

(Re: Dunlop Canada Limited,
Whitby, Ontario)

On January 16, 1964 the Board further endorsed the Record as follows:

"The respondent union is applying for reconsideration of the Board's decision of September 19th, 1963, wherein the Board allowed the applicant to withdraw his application for termination of bargaining rights. Counsel for the respondent argues that the Board's decision allowing the applicant to withdraw is in error and constitutes a departure from Board policy in that, as he contends, the Board following its usual practice should have dismissed the application.

At the commencement of the original hearing of this application, held on September 19th, counsel for the applicant asked leave to withdraw the application because, as he indicated, he did not have sufficient witnesses present to identify all the signatures on the petition filed in support of the application. The representative of the respondent then contended that if the applicant were allowed

to withdraw, the Board should impose a bar against future applications by the same applicant or by any other employees affected by the application.

Without stating whether the Board would grant leave to withdraw or whether it would dismiss the application, the chairman indicated something to the effect, according to our recollection of the incident, that if another application were made, it would be open to the union to make whatever argument was then available to it, as to whether a bar should be imposed. We are told that this remark was construed by the representative for the respondent to mean that the Board considered it had jurisdiction to impose a bar to a subsequent application even if the instant application were allowed to be withdrawn. It is clear that this remark of the chairman was for the purpose of reminding the representative for the respondent, that when an application such as the present was disposed of at the particular stage of the proceedings reached by the present application; in circumstances where a bar is authorized under section 77 (2) (i) of the Act, it is not the usual practice of the Board, in the exercise of its discretion, to impose a bar in advance against subsequent applications affecting the same employees. (See The Mathias Ouellette Case, C.C.H. Canadian Labour Law Reporter, 1955-59 Transfer Binder, T16,026; The Timmins Theatre Case, Board file 7062-63-ii; The Trinidad Leaseholds (Canada) Ltd. Case, C.C.H. Canadian Labour Law Reporter, 1949-54 Transfer Binder, T17,005). Following these remarks, the Board informed the parties that it was reserving its decision as to whether it would grant leave to withdraw or whether it would dismiss the application. Thereafter, this division of the Board met and considered the matter and reached the conclusion that leave should be granted to the applicant to withdraw his application. Its decision in this respect was released in an endorsement of the Board dated September 19th, 1963.

On or about September 20th, the day following the release of the Board's decision allowing the withdrawal of the instant application, a second application for termination of bargaining rights was made by an employee affected by the first application. This second application came on for hearing on October 9th, before a division of the Board differently constituted from the present. No decision has been rendered in the second application pending the Board's decision in the present application for reconsideration.

No request whatever for reconsideration of the Board's decision in the first case was made by the respondent up to the date of the hearing in the second application. We were informed by counsel for the respondent that at the hearing on the second application the respondent's representative argued that since the first application had been withdrawn, the Board should impose a bar against the second application. We are also told by counsel for the respondent, that it was not until she advanced this argument at the hearing in the second case, that the representative for the respondent became aware of the fact that the Board was of the opinion that it did not have jurisdiction to impose a bar under section 77 (2) (i) of the Act where a prior application had been withdrawn rather than dismissed. Following the second hearing, the representative for the respondent, then for the first time consulted legal counsel, who apparently gave her a similar opinion. No application for reconsideration of the decision of the Board in the first case was made, however, until November 1st, 1963. This was nearly three weeks after the time when the representative for the respondent states that she learned, for the first time, that the Board did not consider that it had jurisdiction to impose a bar to the second application.

Apart from any determination of the merits of the respondent's request for reconsideration of the Board's decision of September 19th, the respondent's delay in launching the application for reconsideration must, in the

circumstances of this case, weigh heavily against it. In our view, whatever impression the respondent may have gained from the remarks of the chairman in the first case, the final responsibility for the conduct and presentation of its case must be held to rest with the respondent. In our opinion, it was incumbent upon it, particularly when a new application was launched for termination of bargaining rights, to take timely and expeditious steps to investigate its legal position and to ascertain how the Board's decision in the first application would affect its position in the second application. However, instead of making an immediate application for reconsideration, as might have been expected, if the respondent's argument is valid that the Board's decision allowing the withdrawal was a manifest departure from well-established policy, the union sat on its hands and allowed the second application to proceed to a hearing and allowed the parties to incur expense and inconvenience in that regard. Moreover, even when the problem was brought to the attention of the union at the second hearing on October 9th, it still made no application for reconsideration of the first decision until November 1st, 1963, nearly three weeks after the hearing in the second application.

Even assuming, for purposes of argument, that the remarks of the chairman at the first hearing may have misled the respondent, it must be found that the union had ample time and opportunity to bring this application for reconsideration at a time when the other parties, who are in no way responsible for the respondent's position, would not, as they clearly now would, be prejudiced by any reconsideration of the first application. It cannot be overlooked that so long as the respondent delayed its application for reconsideration, it was in effect permitting, if not inviting, the other parties, at a time when another application was in progress, to rely and act on the apparent finality of the Board's decision of September 19th. If, in these circumstances, the respondent suffers in consequence of its delay in making an expeditious application for reconsideration, it can only be the author of its own misfortune.

In the result, the Board does not deem it advisable to reconsider its decision of September 19th, 1963. The application is, therefore, denied."

CERTIFICATION INDEXED ENDORSEMENT

REQUEST FOR RECONSIDERATION OF BOARD'S DECISION

6868-63-R: Buckley Cartage Employees' Association (Applicant)
v. Buckley Cartage Limited (Respondent). (DISMISSED
NOVEMBER 1963).

The Board further endorsed the Record as follows:

"The Board has given careful consideration to the applicant's request for reconsideration of its decision of November 4th, 1963, on the grounds and arguments set forth in the applicant's letters of November 19th, and December 11th, 1963.

The applicant asserts, as a basis for reconsideration of the Board's decision, that sometime after the date of the application and the hearing, the restrictive provisions of the constitution ceased to exclude a certain person in the bargaining unit from membership because he has since had his status of employment changed from a probationary to a full-time employee. It is pointed out, therefore, that all present employees of the respondent are now eligible for membership in the applicant association. It is manifest, however, that so long as any certificate, which may be issued by the Board, is in effect, the bargaining unit defined therein must operate to include not only the employees who fall within its definition on the date of the application, but also employees who are hired by the employer after the date of application and who then fall within its description. Plainly, whatever effect the restrictions on membership contained in the applicant's constitution may have at this particular

time, they did not at the time of application and the hearing, and do not for the future, make all persons who would be within the description of any unit which the Board would find appropriate for collective bargaining eligible for membership. In this respect, the applicant's constitution plainly and unequivocally provides that only employees who "have been continuously in the service of the company for three months -- shall be eligible for membership." Any bargaining unit which the Board would find appropriate for collective bargaining would include persons employed for less than three months.

The fact that there may or may not be restrictions on membership in the constitution of the unions mentioned in the applicant's letter of December 11th, 1963, cannot affect and is completely irrelevant to our consideration of this case.

The applicant requests the Board to withhold any decision on its request for reconsideration so as to permit the applicant to amend its constitution. Plainly, the Board's decision in this case is, as it must be, based on the facts as they existed and were presented to us at the date of the application and the hearing. It need hardly be said that if the Board were to accede to this kind of request, there would never be any finality or certainty to any of its decisions for on that ground, any party could always patch up the defects in its case and then demand the Board to vary or amend its decision on the basis of the new factual situation.

The matters contained in the applicant's letters do not persuade us that there is any basis whatever for the Board to reconsider its decision.

In the result, we do not deem it advisable to reconsider our decision of November 4th, 1963."

APPLICATION UNDER SECTION 79 OF THE ACT DISPOSED OF
DURING JANUARY 1964.

6692-63-M: United Steelworkers of America (Applicant) v. Barlin-Scott Manufacturing Company Limited (Township of Saltfleet) (Respondent). (WITHDRAWN JANUARY 1964).

On November 5, 1963 the Board endorsed the Record as follows:

"On September 11th, 1963, the Board appointed an examiner to inquire into and report to the Board on the duties and responsibilities of five named persons in the employ of the respondent.

During his cross-examination of the second witness to testify at the hearing held before the examiner, counsel for the applicant took the position that the evidence of the duties and responsibilities of the persons in question should be heard by the Board itself and not by the examiner. His reason for making this submission was that it appeared from the evidence then adduced that credibility might be of importance in the determination of the case.

There is no doubt, of course, that if, at the examiner's hearing, it becomes clear that there is a question of credibility in matters of substantial materiality to the Board's decision of any issue before it, then the Board itself should hear at least so much of the evidence bearing on the issue as is necessary for it to decide what to accept as credible. This is not to say, however, that the Board should withdraw every case from the examiner merely because it is claimed that there is or may be a question of credibility. If this were the case, it would seriously curtail the use which the Board could make of its examiners. It is obvious, of course, that some question of credibility may be involved or anticipated on some point or another in a great many cases where there is viva voce testimony. It is, however, only where a finding on the question of credibility is really essential to the Board's consideration of an issue before it, that it becomes a matter for the Board itself.

In our view, the examiner should remain seized with the responsibility to make the inquiry into all the matters within his terms of appointment until it is clearly demonstrated that there is in fact a question of credibility which relates to a matter of substantial materiality to the Board's consideration of an issue before it. It is only at this stage that the Board should be called upon to hear the evidence. Further, it is only at this stage that the precise area and subject-matter of any question of credibility will be indicated so as to enable the Board to determine whether it should hear some or all of the witnesses and on what points.

There is no evidence before us to indicate that any question of credibility has in fact arisen which would warrant the Board hearing any of the evidence with respect to the duties and responsibilities of any of the persons concerned. The most that can be said at this point is that it is anticipated that there may be a conflict of testimony or a question of credibility may arise with respect to matters which cannot presently be defined or found to be material. In these circumstances the applicant's present request that the Board should hear the testimony must be denied."

PART 2

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TABLE I

APPLICATIONS & COMPLAINTS TO THE ONTARIO LABOUR RELATIONS BOARD

		Number of applications filed 1st 10 months of fiscal year		
		Jan. 1964	63-64	62-63
I	Certification	49	596	618
II	Declaration Terminating Bargaining Rights	9	71	77
III	Declaration of Successor Status	-	22	11
IV	Conciliation Services	91	935	997
V	Declaration that Strike Unlawful	2	29	27
VI	Declaration that Lockout Unlawful	-	5	9
VII	Consent to Prosecute	5	120	131
VIII	Complaint of Unfair Practice in Employment (Section 65)	13	124	118
IX	Miscellaneous	1	17	11
	TOTAL	170	1919	1999

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

		Number 1st 10 months of fiscal year		
		Jan. 1964	63-64	62-63
	Hearings & Continuation of Hearings by the Board	54	845	1007

TABLE III

APPLICATIONS & COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR
RELATIONS BOARD BY MAJOR TYPES

	Number of applications disposed of 1st 10 months of fiscal year		
	Jan. 1964	63-64	62-63
I Certification	46	640	704
II Declaration Terminating Bargaining Rights	9	88	75
III Declaration of Successor Status	2	28	4
IV Conciliation Services	85	947	983
V Declaration that Strike Unlawful	2	29	26
VI Declaration that Lockout Unlawful	2	4	10
VII Consent to Prosecute	16	131	123
VIII Complaint of Unfair Practice in Employment (Section 65)	15	132	125
IX Miscellaneous	3	13	15
TOTAL	180	2012	2065

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY TYPES AND BY DISPOSITION

Disposition	Jan. 1st 10 mos.fiscal yr.			*Employees		
	1964	63-64	62-63	1964	63-64	62-63
I Certification						
Granted	34	460	467	1287	13289	27326
Dismissed	8	112	179	84	3527	10943
Withdrawn	4	68	58	54	1004	2401
TOTAL	46	640	704	1425	17820	40670
II Termination of Bargaining Rights						
Terminated	6	61	46	106	1505	1422
Dismissed	2	23	21	19	514	532
Withdrawn	1	4	8	12	97	233
TOTAL	9	88	75	137	2116	2187

*These figures refer to the number of employees directly affected and are based on the number of employees in the bargaining units at the time the applications for certification were filed with the Board. Totals for applications dismissed and withdrawn are approximate.

APPLICATIONS DISPOSED OF BY
BOARD (continued)

Number of appl'n's disposed of

Jan. 1st 10 mos. fiscal year
1964 63-64 62-63III Conciliation Services*

Referred	77	876	882
Dismissed	3	20	22
Withdrawn	<u>5</u>	<u>51</u>	<u>79</u>
TOTAL	85	947	983

IV Declaration that
Strike Unlawful

Granted	-	6	6
Dismissed	-	3	7
Withdrawn	<u>2</u>	<u>20</u>	<u>13</u>
TOTAL	2	29	26

V Declaration that
Lockout Unlawful

Granted	-	-	1
Dismissed	-	1	6
Withdrawn	<u>2</u>	<u>3</u>	<u>2</u>
TOTAL	2	4	9

VI Consent to
Prosecute

Granted	1	42	18
Dismissed	-	10	17
Withdrawn	<u>15</u>	<u>79</u>	<u>99</u>
TOTAL	16	131	134

*Includes applications for conciliation services re unions claiming successor status.

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY THE BOARD

	Number of Votes		
	Jan. 1st	10 months of fiscal yr.	
	1964	63-64	62-63

*Certification After Vote

pre-hearing vote	2	20	32
post-hearing vote	6	52	27
ballots not counted	-	-	2
<u>Dismissed After Vote</u>			
pre-hearing vote	-	10	15
post-hearing vote	3	45	60
ballots not counted	<u>1</u>	<u>2</u>	<u>1</u>
TOTAL	12	129	137

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY THE BOARD

	Number		
	Jan. 1st	10 months of fiscal yr.	
	1964	63-64	62-63
*Respondent Union Successful	-	5	5
Respondent Union Unsuccessful	<u>2</u>	<u>27</u>	<u>20</u>
TOTAL	2	32	25

*In termination proceedings where a vote is taken, the applicant is a group of employees, or the employer; the incumbent union is thus the respondent.

MONTHLY REPORT



FEBRUARY 1964

ONTARIO LABOUR RELATIONS BOARD

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SUPPLEMENT

AN INTERIM REPORT ON CONSTRUCTION INDUSTRY DIVISION
ONTARIO LABOUR RELATIONS BOARD

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD DURING FEBRUARY 1964

Bargaining Agents Certified During February
No Vote Conducted

7168-63-R: Warehousemen and Miscellaneous Drivers Local Union 419 affiliated with the International Brotherhood of Teamsters Chauffeurs and Helpers of America (Applicant) v. Holland River Gardens Company Ltd. (Respondent).

Unit: "all employees of the respondent at its plant at Bradford, save and except foremen and supervisors, persons above the rank of foreman and supervisor, office and sales staff, persons regularly employed for not more than 24 hours per week, students employed during the school vacation period and persons employed on a temporary or casual basis." (143 employees in the unit).

(WRITTEN REASONS)

7243-63-R: United Brotherhood of Carpenters and Joiners of America Local Union 93 (Applicant) v. P.E. Brule Ltee (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent at Ottawa save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

The Board endorsed the Record as follows:

"In the circumstances of this case as set out below the Board further finds that all carpenters and carpenters' apprentices in the employ of the respondent at Ottawa save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining.

It is clear from the evidence that at the time the application was made, (November 13, 1963), there were only three persons in the bargaining unit, namely F. Gagne, Boream and Rochon. While the respondent had other carpenters employed on that date they were at work in the Province of Quebec.

The Board is satisfied on the basis of all the evidence before it that more than 55 per cent of the employees of the respondent in the bargaining unit

at the material times fixed in accordance with The Labour Relations Act and the Board's Rules of Procedure.

In this regard, it may not be remiss to point out that the dues of one employee were paid up until October 31st, 1963 and that of another until August, 1963 and that in both instances there had been a money payment not more than two months prior to the date of the application. The Board policy is to require evidence of money payment (or some other act indicative of or confirming membership) within the six-month period preceding the date of the application. See Ben Bruinsma & Sons Ltd., O.L.R.B. Monthly Report, July, 1963, p. 223. Moreover, there is no suggestion from the examiner's inspection of the applicant's records that the employees in question were suspended or were other than in good standing. Further, the statements of the employees on the certificates of membership filed with the Board to the effect that they were members are certified correct by the Treasurer of the Union.

It should also be noted that unlike the requirements in the Federal legislation and that of some of the other provinces, there is no requirement under the Ontario Labour Relations Act of membership "in good standing". The words in quotation marks were dropped from the Labour Relations Act, S.O. 1948, 12 Geo. VI, c. 51, on the introduction of the Labour Relations Act, S.O. 1950, 14 Geo. VI, c. 34.

The respondent submits that the Board should dismiss the application or in the alternative order a representation vote. However, it must not be forgotten that this is a construction industry case. While it is true that two of the employees in the bargaining unit on November 13th might be described as casual employees, casual employment is a common feature of this industry. This fact together with the mobility of the labour force, were undoubtedly present in the minds of the legislators when the construction industry amendments were added to the Labour Relations Act. The case is complicated, of course, by the fact that the so-called "permanent" employees of the respondent were engaged on projects in Quebec on the date of the making of the application and, indeed, for some weeks prior thereto. (See Exhibit 8) As we held in the Inter-provincia; Paving Company Limited Case, O.L.R.B. Monthly Report December, 1962, p. 375, the Board would not in its opinion be entitled to consider as appropriate for inclusion in the bargaining unit for purposes of the count, employees who were not working in Ottawa on the day of the making of the application, but instead were working in Quebec.

Moreover, when the two casuals were dismissed, they were replaced by only one "permanent" carpenter, one "on call" carpenter and one other carpenter whose name does not appear as either a permanent or an "on call" employee.

There is no evidence to suggest that the bargaining unit in the past had included any substantially greater number of carpenters than on the day of the making of the application nor any evidence that this would be the case in the future. In any event, having regard to the terms of section 92 (2) of The Labour Relations Act, this is not a factor that the Board need necessarily take into account. In our view, the provisions of section 96 of the Act providing for the early institution of termination proceedings is the legislative answer to the problems created by area certification or a subsequent build up.

In the light of all these considerations, including the confinement of the area to a municipality and our findings in the first two paragraphs under heading No. 4, we are of the opinion that this is a proper case for the issuance of a certificate.

A certificate will therefore issue to the applicant."

7286-63-R: Canadian Union of Public Employeys (Applicant) v. The Board of Education for the Town of Oakville (Respondent).

Unit: "all employees of the respondent in its caretaking and maintenance department, save and except foremen, persons above the rank of foreman, office staff and persons regularly employed for not more than 24 hours per week." (25 employees in the unit).

(AGREEMENT OF THE PARTIES).

7321-63-R: International Woodworkers of America (Applicant) v. Weyerhaeuser Canada Limited (Respondent).

Unit: "all employees of the respondent in its woods operation in the Township of Kincaid and those Townships immediately adjacent thereto in the District of Algoma, save and except foremen, persons above the rank of foreman and office staff." (25 employees in the unit).

The Board endorsed the Record in part as follows:

"The list filed by the respondent contains the names of 25 persons employed at its camp at mileage 67

and the first time in 1900 when the cattle of
Montana were sold in the open market
and the price of cattle was determined
by the market and not by the rancher.

With the opening of the market to the world
the cattle of Montana were sold at a price
which was determined by the market and not
by the rancher. The rancher was compelled
to sell his cattle at a price which was determined
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all of whom are in the bargaining unit determined by the Board in its endorsement of January 22nd, 1964. In support of its application for certification the applicant submitted evidence of membership for 17 persons, 16 of whom are in the bargaining unit. In order to have the necessary fifty-five per cent of employees in the bargaining unit for outright certification, the applicant must submit uncontested evidence of membership for 14 employees. Also placed in evidence, however, were three identical typewritten documents (hereinafter referred to as petitions) all dated December 2nd, 1963 signed by a total of 21 persons purporting to be employees of the respondent expressing opposition to this application. The applicant submitted evidence of membership for 15 of the employees who signed the petitions. If in calculating the weight to be given to the petitions they are held to weaken or qualify the union's evidence of membership for these persons, there would remain uncontested evidence of membership for less than fifty-five per cent of the employees in the bargaining unit. In these circumstances, the Board following its usual practice would direct the taking of a representation vote to obtain confirmatory evidence of the desire of the employees to be represented in collective bargaining by the applicant.

The evidence of Mr. Kurisko, counsel for the group of employees, with respect to the three petitions is that five employees of the respondent attended at his offices in Sault Ste Marie on the afternoon of Friday, November 29th, 1963. The employees had in their possession a number of handwritten documents signed by employees of the respondent expressing opposition to this application. Because of the number of witnesses on the petitions Mr. Kurisko envisaged difficulties in satisfying the Board's requirements as to the manner in which the signatures were secured. He accordingly advised the employees to circulate new petitions and have them witnessed by only one or two employees. Mr. Kurisko thereupon dictated the heading which appears on the petitions and the petitions were typed in his office. Mr. Kurisko advised the employees to return the petitions to his office not later than the afternoon of Monday, December 2nd in order that they could be filed by the terminal date in this application.

Arthur Chapman, an employee of the respondent, was the only other person to give evidence at the hearing of the Board on December 10th in support of the petitions. He stated that he received a telephone call on the evening of Saturday, November 30th from a fellow

employee. The employee informed him that he had in his possession the petitions which had been drawn up in Mr. Kurisko's office. He asked Chapman if he would be prepared to circulate the petitions and witness the signatures which he secured upon them. Chapman agreed to do so and also to attend the hearing of the Board in Toronto. On Sunday evening of December 1st the petitions were delivered to Chapman. On Monday, December 2nd, prior to the commencement of the morning shift, Chapman asked and received the permission of the camp foreman at mileage 67 and the woods manager to take the day off, without pay, in order to circulate the petitions at the camps at both mileage 67 and mileage 100. On that morning he secured the signatures on the petitions at the respondent's camp at mileage 67 in the bunkhouse just prior to the beginning of the shift at 7:30 a.m. No members of management were present when the employees signed the petitions. He immediately thereafter left camp 67 and proceeded to the respondent's camp at mileage 100. Chapman also testified that when he signed up the employees each of them paid him \$10.00 or gave him an "I.O.U." for the same amount to cover his expenses and those of their solicitor, Mr. Kurisko, to appear before the Board in Toronto.

In assessing the weight to be given to petitions filed in opposition to applications for certification, the Board requires first-hand *viva voce* evidence as to the circumstances surrounding the origination and circulation of such petitions. One reason for this requirement is to enable the Board to reasonably satisfy itself that the petitions reflect the true wishes of the employees concerned and have not been sponsored or initiated by management. The Board's requirements in this respect are set forth in the notice to employees of the application for certification (Form 5). Paragraph 8 of the notice reads in part as follows:

"Any representative who appears at the hearing will be required to testify or produce a witness or witnesses who will be able to testify from his or their personal knowledge and observation, as to (a) the circumstances concerning the origination of the material filed, and (b) the manner in which each of the signatures was obtained."

In the instant case, it is clear that the petitions before us were derived from and are dependant upon the earlier petitions which were taken to Mr. Kurisko's office on the afternoon of November 29th.

No evidence, however, was adduced with respect to the origination of the earlier petitions or the circumstances leading up to the five employees attending at Mr. Kurisko's office. The only knowledge that Chapman had concerning the earlier petitions was that he had signed one of them.

Accordingly, on the evidence before us we find that the group of employees opposing this application have failed to meet the Board's requirements with respect to the circumstances concerning the origination of the petitions. We are not therefore prepared to hold that the petitions weaken or qualify the evidence of membership submitted by the union so as to require the Board to seek the confirmatory evidence of a representation vote.

Having regard to the above finding, it is not necessary for the Board to consider the manner in which the petitions were circulated."

7324-63-R: International Woodworkers of America (Applicant) v. Weyerhaeuser Canada Limited (Respondent).

Unit: all employees of the respondent in its woods operation in Township 30-Section XVIII and those Townships immediately adjacent thereto in the District of Algoma, save and except foremen, persons above the rank of foreman and office staff." (17 employees in the unit)

On February 12, 1964 the Board endorsed the record in part as follows:

"The list filed by the respondent contains the names of 26 persons employed at its camp at mileage 100 all of whom are in the bargaining unit determined by the Board in its endorsement of January 22nd, 1964. In support of its application for certification the applicant submitted evidence of membership for 21 persons, 18 of whom are in the bargaining unit. In order to have the necessary fifty-five per cent of employees in the bargaining unit for outright certification, the applicant must submit uncontested evidence of membership for 15 employees. Also placed in evidence, however, were three identical typewritten documents (hereafter referred to as petitions) all dated December 2nd, 1963 signed by a total of 21 persons purporting to be employees of the respondent expressing opposition to this application. The applicant submitted evidence of membership for 17 of the employees who signed the petitions. If in calculating the weight to be given to the petitions they are held to weaken or qualify

the union's evidence of membership for these persons, there would remain uncontested evidence of membership for less than fifty-five per cent of the employees in the bargaining unit. In these circumstances, the Board following its usual practice would direct the taking of a representation vote to obtain confirmatory evidence of the desire of the employees to be represented in collective bargaining by the applicant.

The evidence of Mr. Kurisko, counsel for the group of employees, with respect to the three petitions is that five employees of the respondent attended at his offices in Sault Ste. Marie on the afternoon of Friday, November 29th, 1963. The employees had in their possession a number of handwritten documents signed by employees of the respondent expressing opposition to this application. Because of the number of witnesses on the petitions Mr. Kurisko envisaged difficulties in satisfying the Board's requirements as to the manner in which the signatures were secured. He accordingly advised the employees to circulate new petitions and have them witnessed by only one or two employees. Mr. Kurisko thereupon dictated the heading which appears on the petitions and the petitions were typed in his office. Mr. Kurisko advised the employees to return the petitions to his office not later than the afternoon of Monday, December 2nd in order that they could be filed by the terminal date in this application.

Arthur Chapman, an employee of the respondent, was the only other person to give evidence at the hearing of the Board on December 10th in support of the petitions. He stated that he received a telephone call on the evening of Saturday, November 30th from a fellow employee. The employee informed him that he had in his possession the petitions which had been drawn up in Mr. Kurisko's office. He asked Chapman if he would be prepared to circulate the petitions and witness the signatures which he secured upon them. Chapman agreed to do so and also to attend the hearing of the Board in Toronto. On Sunday evening of December 1st the petitions were delivered to Chapman. On Monday, December 2nd, prior to the commencement of the morning shift, Chapman asked and received the permission of the camp foreman at mileage 67 and the woods manager to take the day off, without pay, in order to circulate the petitions at the camps at both mileage 100 and mileage 67. On that morning, after securing the signatures on the petitions at the camp at mileage 67, Chapman immediately drove by automobile to camp 100. When he arrived at the camp the employees

were working in the woods. He explained to a foreman the reason for his presence and asked him for a "lift" in his motor vehicle to the location where the men were working. The foreman drove him to the location and upon reaching the men he proceeded to secure their signatures on the petitions. The foreman was present when at least some of the employees signed the petitions. Chapman also testified that when he signed up the employees each of them paid him \$10.00 or gave him an "I.O.U." for the same amount to cover his expenses and those of their solicitor, Mr. Kurisko, to appear before the Board in Toronto.

In assessing the weight to be given to petitions filed in opposition to applications for certification, the Board requires first-hand *viva voce* evidence as to the circumstances surrounding the origination and circulation of such petitions. One reason for this requirement is to enable the Board to reasonably satisfy itself that the petitions reflect the true wishes of the employees concerned and have not been sponsored or initiated by management. The Board's requirements in this respect are set forth in the notice to employees of the application for certification (Form 5). Paragraph 8 of the notice reads in part as follows:

"Any representative who appears at the hearing will be required to testify or produce a witness or witnesses who will be able to testify from his or their personal knowledge and observation, as to (a) the circumstances concerning the origination of the material filed, and (b) the manner in which each of the signatures was obtained."

In the instant case, it is clear that the petitions before us were derived from and are dependant upon the earlier petitions which were taken to Mr. Kurisko's office on the afternoon of November 29th. No evidence, however, was adduced with respect to the origination of the earlier petitions or the circumstances leading up to the five employees attending at Mr. Kurisko's office. The only knowledge that Chapman had concerning the earlier petitions was that he had signed one of them.

Accordingly, on the evidence before us we find that the group of employees opposing this application have failed to meet the Board's requirements with respect to the circumstances concerning the origination of the petitions. We are not therefore prepared to hold that the petitions weaken or

qualify the evidence of membership submitted by the union so as to require the Board to seek the confirmatory evidence of a representation vote.

Having regard to the above finding, it is not necessary for the Board to consider the manner in which the petitions were circulated."

7503-63-R: Local 280 of the Hotel and Restaurant Employees' & Bartenders' International Union, A.F.L. C.I.O. C.L.C. (Applicant) v. Ticonic Corporation Limited carrying on business under the name and style of "Saphire Tavern" (Respondent).

Unit: "all tapmen, bartenders, beverage waiters, bar boys and improvers in the employ of the respondent in its Saphire Tavern at Toronto, save and except assistant manager and persons above the rank of assistant manager." (7 employees in the unit).

7505-63-R: The Hotel and Club Employees' Union, Local 299, Toronto, of the Hotel and Restaurant Employees' and Bartenders' International Union - A.F.L. - C.I.O. - C.L.C. (Applicant) v. Canadian Swiss Hotels Limited (Respondent).

Unit: "all employees of the respondent at its Ascot 27 Hotel in Metropolitan Toronto, save and except manager, assistant manager, department heads, persons above the ranks of manager, assistant manager and department head, persons employed in the accounting department, persons regularly employed for not more than 24 hours per week and employees covered by subsisting collective agreements." (50 employees in the unit).

(AGREEMENT OF THE PARTIES).

The Board endorsed the Record in part as follows:

"The bargaining unit in this case included 45 employees of the respondent on the date the application was made. The applicant filed a total of 28 membership documents for persons included in the list of employees in the bargaining unit. There was filed in this matter a document in opposition to this application containing among others the names of 3 persons claimed by the applicant as members. Even if full effect is given to the document filed in opposition to this application, the applicant has 25 employees as members whose membership is in no way challenged or affected by the petition. The Board is therefore satisfied on the basis of all the evidence before it that more than fifty-five per cent of the employees of the respondent

in the bargaining unit, at the time the application was made, were members of the applicant at the material times fixed in accordance with The Labour Relations Act and the Board's Rules of Procedure.

Having regard to the unchallenged membership position of the applicant, the document filed in opposition to this application does not adversely affect the membership position of the applicant and it will therefore not be necessary to make further inquiry into the origination and circulation of the document filed in opposition to this application."

7560-63-R: Printing Specialties & Paper Products Union, Local 466 (Applicant) v. Specialty Paper Products Limited (Respondent).

Unit: "all employees of the respondent at Bowmanville, save and except foremen and foreladies, persons above the ranks of foreman and forelady, office and sales staff and persons regularly employed for not more than 24 hours per week." (56 employees in the unit).

7571-63-R: Amalgamated Lithographers of America, Local 42 (Applicant) v. Glen Gray Printing Co. Limited (Respondent).

Unit: "all lithographers, their apprentices and helpers in the employ of the respondent at Hamilton, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

7579-63-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Kiekhaefer Mercury of Canada Limited (Respondent).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except foremen, persons above the rank of foreman and office and sales staff." (31 employees in the unit).

7581-63-R: United Steelworkers of America (Applicant) v. Armalite Company Limited (Respondent).

Unit: "all employees of the respondent at its plant in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, persons employed in the engineering department, laboratory technicians, and office and sales staff." (14 employees in the unit).

7587-63-R: Canadian Union of Public Employees (Applicant) v. Misericordia Hospital (Respondent).

Unit: "all lay employees of the respondent at its hospital at Haileybury, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, department heads, persons above the rank of department head, chief engineer, office staff and persons regularly employed for not more than 24 hours per week." (209 employees in the unit).

The Board endorsed the Record in part as follows:

"For the purposes of clarity, the Board declares that the term technical personnel comprises physio-therapists, occupational therapists, psychologists, electro-encephalographists, electrical shock therapists, laboratory, radiological, pathological and cardiological technicians.

For the purposes of clarity, the Board declares that the bargaining unit includes certified nursing assistants and student registered nursing assistants.

For the purposes of clarity, the Board declares that the matron and watchmen are not included in the bargaining unit."

7588-63-R: International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers (Applicant) v. Toronto Dry Dock Limited (Respondent).

Unit: "all employees of the respondent in Toronto, save and except foremen, persons above the rank of foreman and office staff." (6 employees in the unit).

7589-63-R: Warehousemen and Miscellaneous Drivers, Local Union 419, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. E. M. Smith & Company (Respondent).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except foremen and dispatchers, persons above the rank of foreman or dispatcher, and office and sales staff." (12 employees in the unit).

7615-63-R: Lumber and Sawmill Workers Union, Local 2693 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Imperial Construction Limited (Respondent).

Unit: "all employees of the respondent working in the District of Thunder Bay, save and except foremen and persons above the rank of foreman, carpenters, carpenters' apprentices and office staff." (7 employees in the unit).

The Board endorsed the Record in part as follows:

"Having regard to (i) the representations of the parties, (ii) to the fact that there were no carpenters on the job on the date of the making of the application, (iii) to the fact that carpenters were employed on the job shortly after the date of the making of the application and (iv) to the fact that an application for certification respecting carpenters and carpenters' apprentices was filed with the Board prior to the hearing of this case, the Board further finds that all employees of the respondent working in the District of Thunder Bay, save and except foremen and persons above the rank of foreman, carpenters, carpenters' apprentices and office staff, constitute a unit of employees of the respondent appropriate for collective bargaining."

7616-63-R: International Hod Carriers Building & Common Labourers Union of America, Local #597 (Applicant) v. Nadeco Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Township of Hope in the County of Durham and in the Townships of Hamilton and Haldimand in the County of Northumberland, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

The Board endorsed the Record in part as follows:

"The applicant has not filed any evidence in support of its claim to the area proposed in the application. Agreements on file with the Board do not support the claim. The Construction Industry Division of the Board has not dealt with the area in previous decisions. In the present case, therefore, there are no materials before the Board which would enable it to make any final decision with respect to an area which would be appropriate in future cases.

In these circumstances we have decided to confine the area on the distinct understanding that it may be reviewed in later cases.

The Board therefore finds that all construction labourers in the employ of the respondent in the

Township of Hope in the County of Durham and in the Townships of Hamilton and Haldimand in the County of Northumberland, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining.

Although the respondent has requested a hearing having regard to the Board's finding respecting area, the Board is of the opinion that a hearing is not necessary since the area granted is less than that proposed by the respondent. The other reason advanced by the respondent for a hearing is not one which in our opinion justifies a hearing. Assuming the fact alleged by the respondent to be true, these are matters which cannot affect the present decision which relates to the date of the making of the application. Instead these are matters for the parties to discuss during collective bargaining.

The respondent filed a reply and a list of employees in the bargaining unit described in the application containing five names.

7622-63-R: Garage Employees Lodge 1120, International Association of Machinists (Applicant) v. Arnie's Auto Body (Respondent).

Unit: "all employees of the respondent at Port Arthur, save and except foremen, persons above the rank of foreman and office staff." (14 employees in the unit).

7624-63-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Amalgamated Electric Corporation, Limited (Respondent).

Unit: "all employees of the respondent in the Township of Markham, save and except foremen, persons above the rank of foreman and office and sales staff." (193 employees in the unit).

(AGREEMENT OF THE PARTIES)

7628-63-R: United Steelworkers of America (Applicant) v. Aerocide Dispensers Limited (Respondent).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except foremen and foreladies, persons above the rank of foreman and forelady, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (83 employees in the unit).

The Board endorsed the Record in part as follows:

"The Board notes the agreement of the parties that production line quality control personnel are included in the bargaining unit and that laboratory staff are excluded from the bargaining unit.

The Board further notes the agreement of the parties that persons classified by the respondent as guards are excluded from the bargaining unit."

7636-63-R: The Draftsmen's Association of Ontario, Local 164, American Federation of Technical Engineers, A.F.L. - C.I.O., C.L.C. (Applicant) v. Turnbull Elevator of Canada Limited (Respondent).

Unit: "all draftsmen and apprentice draftsmen employed by the respondent in its production engineering department at Metropolitan Toronto, save and except supervisors, and persons above the rank of supervisor." (32 employees in the unit).

7638-63-R: Canadian Union of Public Employees (Applicant) v. The Municipal Corporation of the City of Belleville (Respondent).

Unit: "all employees of the respondent in its works department, save and except superintendents, persons above the rank of superintendent and office staff." (47 employees in the unit).

(AGREEMENT OF THE PARTIES).

7645-63-R: Canadian Union of Public Employees (Applicant) v. Public Utilities Commission of the Village of Port Stanley (Respondent).

Unit: "all employees of the respondent, save and except superintendents, persons above the rank of superintendent, office staff and students employed during the school vacation period." (6 employees in the unit).

7647-63-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Doral Holdings Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

The Board endorsed the Record in part as follows:

"At the hearing in this matter the respondent made extensive representations on the question of the description of the bargaining unit. These representations related to the area proposed by the applicant and to the proposed exclusion of non-working foremen. On the question of area, the Board's views are set out in a series of decisions including, Ball Brothers Limited, O.L.R.B. Monthly Reports, October 1962, page 236; November 1962, page 297; January 1963, page 432; and P. R. Connolly Construction Limited, Board file 7242-63-R, O.L.R.B. Monthly Report, December 1963 (to be released in the near future). The representations of the respondent in this case do not differ in any material respect from those advanced in the above and other cases by the employers concerned.

After careful consideration we see no reason to depart at this time from the views expressed in our earlier decisions.

With respect to the exclusion problem, the answer to the respondent's submissions is a simple one. There were no employees in the bargaining unit on the date of the making of the application who would fall into the classification which the respondent seeks to exclude. It is not the policy of the Board to exclude persons in a non-existent classification. Particularly must this be so where the respondent's submission would call for the reversal of a long standing practice of this Board, and, indeed, of the Construction Industry in general. It might, perhaps, be added that the reason for the policy is that no persons exist from whom the Board can ascertain the extent of their duties and responsibilities and the Board is not prepared to exclude persons on the basis of hypothetical assumptions by the parties.

Having regard to the above considerations and to the circumstances of this case the Board further finds that all carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining."

7648-63-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Excel Metalcraft Ltd. (Respondent).

Unit: "all employees of the respondent at Aurora, save and except foremen, persons above the rank of foreman, office and sales staff." (83 employees in the unit).

(AGREEMENT OF THE PARTIES).

7649-63-R: International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Local 938, General Truck Drivers affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Vail & Sheppard Cartage. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, despatchers, persons above the rank of foreman or despatcher, office and sales staff and persons regularly employed for not more than 24 hours per week." (33 employees in the unit).

(AGREEMENT OF THE PARTIES).

7655-63-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Lang's Foods Limited (Respondent).

Unit: "all employees of the respondent at its plants in Hamilton, save and except foremen, persons above the rank of foreman, office and sales staff." (47 employees in the unit).

7657-63-R: International Union of Operating Engineers, Local 793 (Applicant) v. Hugh N. Grant Limited (Respondent).

Unit: "all employees of the respondent working at or out of Ottawa, engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintenance of same, save and except non-working foremen and persons above the rank of non-working foreman." (35 employees in the unit).

7658-63-R: International Hod Carriers' Building and Common Labourers' Union of America, (A.F.L. - C.I.O.) Local 527, (Applicant) v. Larouche Brothers Construction Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent working at or out of the City of Ottawa, save and except non-working foremen and persons above the rank of non-working foreman." (17 employees in the unit).

7659-63-R: United Brotherhood of Carpenters and Joiners of America, Local Union #1071 (Applicant) v. Nadeco Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Township of Hope in the County of Durham and in the Townships of Hamilton and Haldimand in the County of Northumberland, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

7660-63-R: Warehousemen and Miscellaneous Drivers, Local Union 419, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Corcoran Foods Ltd. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (10 employees in the unit).

7668-64-R: Teamsters' Local Union No. 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers, of the International Brotherhood of Teamsters (Applicant) v. Caledon Haulage Company Ltd. (Respondent).

Unit: "all employees of the respondent employed at or working out of Brampton, save and except foremen, persons above the rank of foreman, office and sales staff." (6 employees in the unit).

7669-63-R: Canadian Brotherhood of Railway, Transport and General Workers (Applicant) v. John Grant Haulage Limited (Respondent).

Unit: "all employees of the respondent at Clarkson, save and except foremen, persons above the rank of foreman, office and sales staff and persons in the maintenance department regularly employed for not more than 24 hours per week." (24 employees in the unit).

(AGREEMENT OF THE PARTIES).

7670-63-R: United Steelworkers of America (Applicant) v. Central Precision Limited (Respondent).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except foremen, persons above the rank of foreman and office staff." (56 employees in the unit).

7680-63-R: International Union of Operating Engineers, Local 796 (Applicant) v. Triton Centres Limited (Respondent).

Unit: "all stationary engineers and persons regularly engaged as their helpers, employed by the respondent in its

Yorkdale Shopping Centre in Metropolitan Toronto, save and except chief engineer." (4 employees in the unit).

7682-63-R: United Rubber, Cork, Linoleum & Plastic Workers of America, AFL - CIO - CLC (Applicant) v. Gates Rubber of Canada Limited (Respondent).

Unit: "all employees of the respondent at Brantford, save and except foremen, persons above the rank of foreman, chief engineer, students employed during the school vacation period, office and sales staff." (117 employees in the unit).

7683-63-R: The United Brotherhood of Carpenters & Joiners of America Local Union 1669 (Applicant) v. Imperial Construction Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent working in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

7706-63-R: United Brotherhood of Carpenters & Joiners of America, Local #802 Millworkers (Applicant) v. Harrow Farmers Co-operative Association Limited (Respondent).

Unit: "all employees of the respondent at Amherstburg, save and except managers, persons above the rank of manager and office staff." (5 employees in the unit).

7714-63-R: General Truck Drivers, Local 938 (Applicant) v. Chandler Cartage Limited (Respondent).

Unit: "all employees of the respondent in the Township of Etobicoke, save and except foremen, persons above the rank of foreman, office and sales staff." (16 employees in the unit).

7717-63-R: United Brotherhood of Carpenters & Joiners of America (Applicant) v. Slough Construction and Properties Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent within a twenty-five mile radius from the Toronto City Hall, and including the Town of Newmarket, and an area bounded on the east by the westerly limits of the third concession road, running north and south, east of Yonge Street; on the north by the southerly limits of the first concession road, running east and west, north of Newmarket; on the west by the easterly limits of the first concession road, running north and south, west of Yonge Street, save and except non-working foremen and persons above the rank of non-working foreman." (14 employees in the unit).

The Board endorsed the Record in part as follows:

"The area proposed by the applicant in this case is one which has been granted by the Board in previous cases. In addition, it corresponds to the area established in the collective agreements between unions and employers in the Construction Industry."

7728-63-R: Local #114, International Bro. of Bookbinders (Hamilton) (Applicant) v. Echlin Press Limited (Respondent).

Unit: "all journeymen and journeywomen bookbinders and their apprentices in the employ of the respondent at Hamilton, save and except foremen and persons above the rank of foreman." (6 employees in the unit).

7736-63-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Mayfair Hotel (Kitchener) Limited (Respondent).

Unit: "all employees of the respondent at its hotel at Kitchener, save and except manager, persons above the rank of manager and office staff." (35 employees in the unit).

The Board endorsed the Record in part as follows:

"For the purposes of clarity the Board declares that desk clerks are employees of the respondent included in the bargaining unit."

7737-63-R: International Brotherhood of Bookbinders, AFL-CIO-CLC (Applicant) v. Hutchings & Patrick Limited (Respondent).

Unit: "all employees of the respondent at Ottawa, save and except non-working foremen, non-working foreladies, persons above the ranks of non-working foreman and non-working forelady, and office and sales staff." (61 employees in the unit).

(AGREEMENT OF THE PARTIES).

7739-63-R: International Hod Carriers Building and Common Labourers Union of America, Local # 493 (Applicant) v. Towland Construction Limited (Respondent).

Unit: "all construction labourers employed by the respondent in its sewer and watermain operations in the City of Sault Ste. Marie and in the Townships of Prince, Korah and Tarentorous and in the unorganized Townships of Parke and Awenge and the Townships immediately adjacent thereto, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

7813-63-R: International Hod Carriers' Building and Common Labourers' Union of America, Local 837, Hamilton, Ontario (Applicant) v. Art Ellis Construction (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Counties of Lincoln, Welland and Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

Certified Subsequent to Pre-Hearing Vote

6675-63-R: International Chemical Workers Union (Applicant) v. Max Factor and Company (Respondent).

Unit: "All employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, sales staff and office staff." (74 employees in the unit).

On February 4, 1964 the Board endorsed the Record as follows:

"The applicant having requested that a pre-hearing representation vote be taken in this matter and the respondent having objected to the taking thereof, the Board, by its decision of August 16, 1963, directed that the vote be taken and the ballot boxes sealed and the ballots not counted until the parties had been given full opportunity to present their evidence and make their submissions.

The respondent's objections are as follows:

"It has come to the attention of Max Factor & Company that the \$1.00 fee of some of the employees who have signed membership cards for the Union has been paid by some of the organizers. Two names of employees for whom the fee was paid are Chris Bradley and Marie Horslin. We believe that in the case of Chris Bradley, Bill Brown paid her \$1.00 fee and in the case of Marie Horslin, Bob Veitch paid her \$1.00 fee.

The company is also informed that Joe Varnell offered to pay the \$1.00 initiation fee of Alice Eaton, but that Alice Eaton in fact paid her own fee.

We also understand that Ellen Oates was approached by Herb Smith and was asked to join the Union. During this discussion it was stated by Herb Smith that the Union organizers were not actually paying the \$1.00 for the employees, but were merely loaning \$1.00 to the employees and then receiving it back in payment of the membership fee.

If our information is correct, it would appear that the above practice is fairly widespread in organization attempts of the International Chemical Workers Union at the Max Factor plant."

and:

"It has come to the attention of Max Factor & Company that the organizers for International Chemical Workers Union have been organizing during working hours on the premises of the Company and they have been advising the employees that upon the certification of the Union all employees not members of the applicant will be forced to pay a \$25.00 penalty to the Union.

One specific instance of this impropriety was an occasion in which William Brown, Joseph Varnell, Herb Smith and Robert Veitch told Chris Bradley that if she did not join the Union now she would have to pay \$25.00 when the Union was certified."

Following the taking of the vote on August 23, 1963, the respondent advised the Board that it desired to present evidence and make representations with respect to its objections.

In so far as the respondent's objections related to the non-payment of membership fees to the union by Christine Bradley and Marie Horslin, the Board, following its usual practice in such cases, caused a preliminary investigation to be made and, as a result thereof, conducted a number of hearings with respect to this allegation.

Mrs. Bradley admits that, during a visit to her home by Joseph Varnell and Herbert Smith on the night of July 30th, 1963, she signed the membership card which the applicant filed on her behalf. Although she also signed the portion of her card which confirmed payment of her initiation fee, she says that she did not pay it. Her evidence is that she did not have the money at that time and, when she told them, Smith said that they could pick it up from her at work on Friday but no one has asked her for it since that time. Her husband also says that she did not pay the fee that night and that something was said about paying it later. Her forelady, Ellen Oates, testified that Mrs. Bradley told her that Bill Brown had paid her initiation fee of \$1.00. Both Varnell and Smith state that Mrs. Bradley did pay \$1.00 to Varnell on

the night she signed her card and deny that either of them said anything about picking up the fee from her at work on Friday. Brown, who was not present on the night in question, denies that he paid the fee of Mrs. Bradley and it is significant that Mrs. Bradley did not testify to this effect before the Board. Thus there is a direct conflict in the evidence before the Board as to whether or not Mrs. Bradley paid her initiation fee of \$1.00 to Varnell at the time she signed her membership card. On the basis of all the evidence before us with respect to this matter, and having regard to the demeanour of the witnesses and to the nature of their evidence, we can only conclude that Mrs. Bradley did pay her initiation fee on the night of July 30th and we find accordingly.

Mrs. Horslin also admits that, during a visit to her home by Robert Veitch and Roseann Sarboro on the night of July 29, 1963, she signed the membership card which the applicant filed on her behalf as well as the portion which confirmed the payment of her initiation fee. Whether she had only a twenty dollar bill, as she testified, or some small change, as Veitch and Sarboro say, it was arranged that she could pay Miss Sarboro at work on the following morning. Her evidence is that, having been advised by her husband against paying it, she told Miss Sarboro to tell Veitch to tear up her card. Miss Sarboro denies that Mrs. Horslin so advised her and says that she informed Veitch after work on that day that Mrs. Horslin had not paid her. Veitch testified that he then went to Mrs. Horslin's home and received \$1.00 from her. This is denied by Mrs. Horslin. Again there is a direct conflict in the evidence before us as to whether or not Mrs. Horslin paid the fee to Veitch on the night of July 30th. On the basis of all the evidence, and again having regard to the demeanour of the witnesses and the nature of their evidence, we are not prepared to accept the evidence of Veitch. Accordingly, we find that Marie Horslin has not paid an initiation fee to the applicant union.

In view of our conclusion that Marie Horslin did not pay her initiation fee to the collector shown on the card, we have to consider the weight to be attached to the evidence of membership filed by the applicant in support of its application. The facts which are relevant to this part of our judgment are as follows: on or about July 26th, 1963, the employment of Brown, Veitch, Varnell and Smith with the respondent was terminated, whether by the named employees or by the respondent is not material to our decision herein.

On the following Monday, July 29th, Brown and Veitch were directed to Mr. Simpson of the applicant union and the organizational campaign among the employees of the respondent was commenced. At the end of each day, the cards and money were turned over to Brown who, in turn, passed them on to Mr. Simpson. Brown stated that neither Veitch nor any one else engaged in their campaign for members had ever turned in a card to him without money. The application, together with all evidence of membership, was filed with the Board in each instance by Alfred Simpson, International Representative of the applicant. It is clear that neither Brown nor Veitch hold any office in the applicant union. On the basis of the evidence before us, we are satisfied that Simpson had no knowledge of the non-payment by Marie Horslin, either at the time he filed her membership card or at the time he filed the Declaration Concerning Membership Documents (Form 9) with the Board, nor, for that matter, that Brown had such knowledge. In our view, the action of Veitch is that of "a supporter or canvasser on behalf of an applicant who occupies an inferior office or no office in the union". See Webster Air Equipment Company Limited Case, (1958) C.C.H. Canadian Labour Law Reporter, Transfer Binder, #16,110; C.L.S. 76,598. In that case the Board stated:

Where the irregularity relates to evidence of membership procured by a person of lesser rank in the union organization, the Board has taken the position that the card in respect of which the irregularity is established is disallowed and the weight to be given to the remaining evidence of membership will depend on the nature of the irregularity and the extent to which the objectionable practice was resorted to in the signing up of members.

Since this is the only incident of non-payment in the present case, we are of opinion that the card filed on behalf of Marie Horslin should be disallowed and weight given to the remaining evidence of membership filed by the applicant.

With respect to the remaining objections of the respondent, the Board, following the conclusion of its inquiries into the allegation of non-payment, conducted a further hearing in this matter. In so far as these objections allege that the organizers were offering to pay the initiation fees and that such practice was fairly widespread, the respondent relies on the evidence of Alice Eaton and Ellen Oates. Mrs. Eaton says that,

after some discussion with Varnell about the reason for wanting a union she signed her membership card and Varnell said: "That will be a dollar". She replied: "Now you tell me", and he said: "Never mind, mum, I'll pay it for you". However, she paid the fee herself. Varnell denies that he offered to pay the dollar for her. Mrs. Oates received a telephone call from Smith in which he asked her to join the union. When the matter of the fee came up, Mrs. Oates told him that she was aware "they'd been paying the dollar fee and didn't think that was right" and says that he replied to her that "it wasn't a matter of paying it - they gave it to the person and they handed it back again". Smith says that, while the fee came up, he did not offer to pay hers or that of anyone else. On the basis of all the evidence before us, and having regard to the demeanour of the witnesses, the nature of their evidence and the circumstances in which the respective conversations took place, we are not prepared to find that Varnell in fact offered to pay the initiation fee for Mrs. Eaton or that Smith admitted to Mrs. Oates that the organizers were engaging in the practice of loaning money to the employees for the purpose of paying their membership fees. Accordingly, in our view, the respondent has failed to establish its allegations in this respect.

The remaining allegation of the respondent is that the organizers advised employees that, following certification of the union, non-member employees would have to pay a penalty of \$25.00 to the union and, in particular, that Brown, Smith, Varnell and Veitch made statements of this nature to Mrs. Bradley. However, Mrs. Bradley was not called as a witness in support of this allegation and the only evidence before the Board in this respect is that of Mrs. Oates and Smith. The substance of Mrs. Oates' testimony is that she told Smith, during their telephone conversation referred to above, that various people had told her that they had been told that they would have to pay \$25.00 if they didn't pay \$1.00 and he, in reply, stated that "that was the penalty the union could force people to pay if they didn't join right away". In view of the nature of this evidence, we are not prepared to find that any organizer actually made the alleged statement to any employee. Nor, in the light of the evidence before us, are we prepared to find that a statement of this kind, if it had been made, would constitute intimidation or coercion. If we were prepared to accept the testimony of Mrs. Oates as to what Smith said to her, we could only conclude, in the circumstances of this case, that his statement was made to her by way of explanation and not

as an admission that he or any other organizer was making such statements to employees for the purpose of securing membership by intimidation or coercion. In reaching our conclusions, we have not overlooked the fact that, while Mrs. Bradley was not called to testify with respect to this aspect of the case, she did state, in her testimony regarding the allegation of non-payment, that Smith told her that "if you don't join the union, it will cost you \$25.00 if the union got in". Smith and Varnell deny that this statement was made. For the reasons referred to in paragraph 3 of this decision, we are not prepared to give any weight to Mrs. Bradley's testimony and we accept the evidence of Smith and Varnell in this respect. We find, therefore, that the respondent has also failed to establish this portion of its allegations as well.

In view of our conclusions herein, the Board directs that the Registrar cause the Ballots cast by all those eligible to vote in the pre-hearing representation vote to be counted and report to the Board."

Number of names on revised eligibility list	57
Number of ballots cast	57
Number of spoiled ballots	3
Number of ballots marked in favour of applicant	30
Number of ballots marked as opposed to applicant	24

7013-63-R: International Union of Operating Engineers, Local 869 (Applicant) v. Canadian Linen Supply (Ontario) Ltd. (Respondent).

Unit: "all stationary engineers and persons regularly engaged as their helpers employed in the boiler room of the respondent." (2 employees in the unit).

On February 10, 1964, the Board endorsed the Record as follows:

"The applicant applied to be certified as bargaining agent of "all stationary engineers and helpers employed in boiler room" of the respondent at Ottawa.

At the pre-hearing vote meeting which was held on October 10th, 1963, two days after the terminal date, the respondent took the position that the appropriate unit would be

"all stationary engineers and helpers in the employ of the respondent save and except chief engineer"

leaving only one person in the unit.

Subsequently the respondent filed a reply to the application wherein it altered its position with respect to the description of the bargaining unit. The respondent alleged that because the stationary engineers perform certain maintenance functions on laundry equipment in addition to their function of operating the boiler in the respondent's plant, the appropriate unit would be an all employee unit in this case. It also took the position that if the Board should find a unit of stationary engineers to be appropriate, one of the two stationary engineers exercised managerial functions thus leaving only one in the unit, and accordingly the application should be dismissed.

Having regard to all the evidence and the representations of the parties, the Board is satisfied that the unit proposed by the applicant includes a group of employees who exercise technical skills and who are members of a craft by reason of which they are distinguishable from other employees and commonly bargain separately and apart from other employees through a trade union that according to established trade union practice pertains to such skills or craft.

Pursuant to section 6(2) of The Labour Relations Act, such group of employees shall be deemed by the Board to be a unit appropriate for collective bargaining where they are not included in a bargaining unit represented by an incumbent bargaining agent, since the applicant trade union pertains to such skills or craft.

Accordingly, the Board does not consider it advisable to vary or revoke its decision dated November 21st, 1963 with respect to the description of the appropriate bargaining unit in this matter.

Having regard to the evidence contained in the examiner's report dated November 6th, 1963 and the representations of the parties, we find that the respondent has failed to satisfy us that there is any justification in this case to cause the Board to depart from its usual policy with respect to units of stationary engineers. Where the "chief engineer" stands a regular shift, the Board has consistently found that he is included in the bargaining unit. In this case the chief engineer is one of two stationary engineers and stands a regular shift.

The responsibilities of Mrvin Craig in this matter are consistent with the responsibilities of the

chief engineer in any unit of stationary engineers of this size. Where a boiler room operates under a certificate of a stationary engineer (in this case, Craig) certain responsibilities automatically flow as a result of legislation requiring the employment of stationary engineers. Any responsibilities exercised by Craig are consistent with those exercised by any other stationary engineer in similar circumstances and are not managerial functions within the meaning of section 1 (3) (b) of The Labour Relations Act.

In addition Craig "considers himself as a shift engineer only" and this statement in the examiner's report is not refuted by any other evidence.

The respondent has not alleged that new evidence is now available which was not available at the time of the examiner's inquiry into the duties and responsibilities of Craig.

For all these reasons, we do not deem it advisable to reconsider, vary or revoke the Board's decision with respect to the Board's finding that Marvin Craig is an employee of the respondent included in the bargaining unit as determined in the Board's decision dated November 21st, 1963.

The respondent's request that the Board revoke its decision and dismiss this application is therefore denied and the Registrar is directed to cause the ballots cast by all those eligible to vote in the pre-hearing representation vote to be counted and report to the Board."

Board Member H. F. Irwin dissented and said:

"I dissent. The duties of the chief engineer, Marvin James Craig, include the screening of applicants for jobs as stationary engineers and on the maintenance staff. If he recommends them, they receive the job.

In the Toronto Star Case, File No. 12905-57, telephone supervisors who gave spelling and telephone tests to applicants were excluded from the bargaining unit.

I therefore, would have excluded the chief engineer from the bargaining unit in the instant case. As this would leave only one employee in the bargaining unit, I would have dismissed the application."

Number of names on eligibility list	2
Number of ballots cast	2
Number of ballots marked in favour of applicant	2
Number of ballots marked as opposed to applicant	0

7165-63-R: International Union of Operating Engineers,
Local 700 (Applicant) v. St. Peter's Infirmary (Respondent)
v. Local Union No. 778, Canadian Union of Public Employees
(Intervener).

Unit: "all stationary engineers employed by the respondent
in its boiler room at Hamilton, save and except the chief
engineer." (5 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 648)

Number of names on eligibility list	5
Number of ballots cast	5
Number of ballots marked in favour of applicant	5
Number of ballots marked in favour of intervener	0

Certified Subsequent to Post-hearing Vote

7247-63-R: International Woodworkers of America (Applicant)
v. Fitton-Parker Furniture, Limited (Respondent) v. United
Brotherhood of Carpenters and Joiners of America, Local 3189
(Intervener).

Unit: "all employees of the respondent at Southampton, save
and except foremen, persons above the rank of foreman, and
office and sales staff." (81 employees in the unit).

Number of names on revised eligibility list	71
Number of ballots cast	62
Number of spoiled ballots	5
Number of segregated ballots not counted)	5
Number of ballots marked in favour of applicant	52
Number of ballots marked as opposed to applicant	0

7449-63-R: United Steelworkers of America (Applicant) v. Foster Wheeler Limited (Respondent) v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers (Intervener) v. The Canadian Steelworkers' Union, Foster Wheeler Division, National Council of Canadian Labour (Intervener).

Unit: "all employees of the respondent in St. Catharines, save and except foremen, persons above the rank of foreman, leading hands, office and clerical staff, plant guards, inspectors, Xray technicians and persons bound by subsisting collective agreements between the respondent and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers and Draftsmen's Association of Ontario, Local 164, American Federation of Technical Engineers, A.F. of L. - C.I.O., C.L.C. (Intervener). (290 employees in the unit).

Number of names on revised eligibility list	269
Number of ballots cast	258
Number of ballots marked in favour of applicant	164
Number of ballots marked in favour of The Canadian Steelworkers' Union, Foster Wheeler Division, National Council of Canadian Labour	93
Number of spoiled ballots	1

Applications for Certification Dismissed No Vote Conducted

7591-63-R: United Brotherhood of Carpenters & Joiners of America, Local Union 2968 (Applicant) v. Temuss Products Canada Ltd. (Ajax) (Respondent).

Unit: "all employees of the respondent at Ajax, save and except foremen, persons above the rank of foreman, office staff and laboratory staff." (7 employees in the unit).

7618-63-R: United Brotherhood of Carpenters & Joiners of America (Applicant) v. Continental Yacht Sales (Whitby Township plant) (Respondent). (22 employees).

The Board endorsed the Record as follows:

"The Board finds that on the date this application was made the respondent had no employees in any bargaining unit which the Board might deem to be appropriate.

This application is therefore dismissed."

7730-63-R: The Canadian Union of Operating Engineers (Applicant) v. Aerocide Dispensers Limited (Respondent).

The Board endorsed the Record as follows:

"On January 24th, 1964 the United Steelworkers of America made application for certification as bargaining agent for certain employees of Aerocide Dispensers Limited. The terminal date fixed for that application was February 3rd, 1964. Following a hearing of the application by the Board on February 11th, the Board issued a certificate dated February 12th, 1964 certifying the United Steelworkers of America as bargaining agent for all employees of Aerocide Dispensers Limited at Metropolitan Toronto with certain exceptions not here material.

On February 7th, 1964 the applicant made application for certification as bargaining agent for all stationary engineers, refrigeration and compressor operators employed by the respondent. Since the employees of the respondent applied for by the applicant are included in the bargaining unit for which the United Steelworkers of America were certified on February 12th, 1964, the Board finds that this application is untimely.

Accordingly, pursuant to section 77 subsection (3) (c) of The Labour Relations Act this application is dismissed."

Certification Dismissed subsequent to Pre-Hearing Vote

7496-63-R: The Canadian Union of Operating Engineers, Local 101 (Applicant) v. Grace Hospital (Respondent) v. International Union of Operating Engineers, Local 796 (Intervener).

Voting Constituency: "all stationary engineers employed by the respondent at Toronto." (5 employees in the constituency).

Number of names on revised eligibility list	4
Number of ballots cast	4
Number of ballots marked in favour of applicant	2
Number of ballots marked in favour of intervener	2

Certification Dismissed subsequent to Post-hearing Vote

6262-63-R: Retail Clerks International Association (Applicant) v. Sentry Department Stores Limited (Respondent).

Unit A: "all employees of the respondent employed at its retail stores in Sarnia Township, save and except assistant managers, persons above the rank of assistant manager, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (57 employees in the unit).

Unit B: "all employees of the respondent at its retail stores in Sarnia Township who are regularly employed during the school vacation period." (11 employees in the unit).
(SEE INDEXED ENDORSEMENT PAGE 642)

UNIT "A"

Number of names on revised eligibility list	41
Number of ballots cast	41
Number of ballots segregated (not counted)	5
Number of ballots marked in favour of applicant	9
Number of ballots marked as opposed to applicant	27

UNIT "B"

Number of names on revised eligibility list	17
Number of ballots cast	17
Number of ballots segregated (not counted)	2
Number of ballots marked in favour of applicant	5
Number of ballots marked as opposed to applicant	10

7098-63-R: International Woodworkers of America (Applicant)
v. B.M.V. Manufacturing Co. Limited (Respondent).

Unit: "all employees of the respondent at Milverton, save
and except foremen, persons above the rank of foreman, office
and sales staff." (17 employees in the unit).

On January 7, 1963 the Board endorsed the Record in part as
follows:

"There was filed with the Board a typewritten
statement of desire dated October 23rd, 1963 (hereafter
referred to as the 'petition') which bears the
signatures and addresses of sixteen persons purporting to
be employees of the respondent. The heading on the
document reads:

'We the undersigned employees of the
B.M.V. Manufacturing Co. of Milverton, Ontario,
wish to file a petition against all agreements
with the International Woodworkers of America
and any other Union.'

We the undersigned, have signed of our
own free will.'

In our opinion the above wording does indicate opposition to this application for certification.

The evidence before us is that John Scrimgeour, an employee of the respondent, prepared the wording of the petition and that his wife typed the heading on the document that was submitted to the Board. The document was typed in the office of the respondent during working hours but at a time when management was absent from the office. Mrs. Scrimgeour is one of two typists who do the general office work. Both girls work for Mr. Caton and Mr. Wright, who are the management of the company, but neither girl is specifically assigned to either of the two men. Most of the signatures on the petition were secured by Scrimgeour in the evening at the homes of the employees. Mrs. Scrimgeour accompanied her husband when he solicited support for the petition.

Counsel for the applicant argues that because Mrs. Scrimgeour works for the management personnel, a fact which is known to all the employees, her presence would prevent the employees from expressing their true wishes, as they would have reason to believe that their failure to support the petition would be conveyed to management.

There is no allegation that Mrs. Scrimgeour was employed in any confidential capacity to either of the two members of management, and there is no evidence that any employees regarded her as being employed in such a capacity. Moreover, there is no evidence to suggest that any of the employees were influenced by Mrs. Scrimgeour's presence to sign the petition. In these circumstances, we are not prepared to find that the petition does not represent a true expression of the wishes of the employees who signed it."

Board Member D. M. Storey said:

"I would not have given any weight to the petition for the following reasons:

The petition in this case voices opposition to 'all agreements with the IWA or any other union'. Form 5, which is the form used for notifying employees that an application for certification has been made, instructs employees that if they desire to make representations to the Board in opposition to such application they may do so by following a certain procedure. There is no set form as to the language that must be used, but the representations must be in such a form as to voice

opposition to the application for certification. In the instant case the petition does not do any such thing. It only voices opposition concerning some unknown agreement.

Secondly, the method used to obtain the signatures on the petition are such that it casts grave doubts as to whether the petition truly represents the voluntary wishes of the employees concerned. The petitioner along with some colleagues wrote the petition out on company time and premises, then proceeded to the office where he had his wife type same. Some time later he returned and took the petition back to his work station.

In the office there are four employees - two, who for the purposes of this award may be described as management officials, and two clerk typists, one of which is the petitioner's wife. Both clerk typists do clerical work for the two management officials, and certainly are in close contact with said officials every working day.

All of the signatures with the exception of one were obtained at the employee's residence, but while said signatures were being obtained the petitioner was accompanied by his wife. The employees are very much aware that Mrs. Scrimgeour is in close contact with management, and in a position, if she chose to do so, to inform them as to who had and had not signed the petition.

The fact that the petition was typed in the office itself is not fatal, but when combined with the fact that the petitioner's wife, an office employee, closely associated with management, was present when the signatures were obtained, in my opinion, is sufficient to destroy the voluntary aspects of the petition.

I would have certified the applicant.

Number of names on revised eligibility list	30
Number of ballots cast	30
Number of ballots marked in favour of applicant	1
Number of ballots marked as opposed to applicant	29

7253-63-R: Welders Public Garage Employees Motor Mechanics and Allied Workers Local Union 847, affiliated with the International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers of America (Applicant) v. Canadian Tire Corporation Limited (Respondent).

Unit: "all employees of the respondent at its Sheppard Avenue East warehouse, in the Township of North York, save and except department managers, foremen and supervisors, persons above the ranks of department manager, foreman and supervisor, office staff, security manager and personnel records staff." (243 employees in the unit).

(AGREEMENT OF THE PARTIES).

Number of names on revised eligibility list	220
Number of ballots cast	220
Number of ballots spoiled	6
Number of ballots segregated (not counted)	1
Number of ballots marked in favour of applicant	88
Number of ballots marked as opposed to applicant	125

7420-63-R: International Union of Operating Engineers
(Applicant) v. Douglas Memorial Hospital (Respondent).

Unit: "all employees of the respondent at its hospital at Fort Erie, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, foremen, persons above the rank of supervisor or foreman, chief engineer, office staff, persons regularly employed for not more than 24 hours per week, and stationary engineers and persons primarily engaged as their helpers in the boiler room." (40 employees in the unit).

The Board endorsed the Record in part as follows:

"For the purposes of clarity, the Board declares that the term technical personnel comprises physiotherapists, occupational therapists, psychologists, electro-encephalographists, electrical shock therapists, laboratory, radiological, pathological and cardiological technicians.

For the purposes of clarity, the Board declares that the bargaining unit includes certified nursing assistants."

Number of names on revised eligibility list	34
Number of ballots cast	34
Number of ballots marked in favour of applicant	10
Number of ballots marked as opposed to applicant	24

7538-63-R: Retail, Wholesale and Department Store Union, AFL; CIO:CLC (Applicant) v. Canada Dry Limited (Respondent).

Unit: "all employees of the respondent at Niagara Falls, save and except supervisors, persons above the rank of supervisor, office staff, and persons regularly employed for not more than 24 hours per week." (11 employees in the unit).

Number of names on revised eligibility list	8
Number of ballots cast	8
Number of ballots segregated (not counted)	1
Number of ballots marked in favour of applicant	0
Number of ballots marked as opposed to applicant	7

7562-63-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Canada Dry Limited (Respondent).

Unit: "all employees of the respondent at Dundas, save and except supervisors, persons above the rank of supervisor, office staff and persons regularly employed for not more than 24 hours per week." (21 employees in the unit).

Number of names on revised eligibility list	14
Number of ballots cast	14
Number of ballots marked in favour of applicant	2
Number of ballots marked as opposed to applicant	12

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING FEBRUARY 1964

7412-63-R: Teamsters Chauffeurs Warehousemen and Helpers Local Union No. 880 affiliated with the International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers of America (Applicant) v. Sunshine Uniform Co. Ltd. (Respondent). (8 employees).

7597-63-R: International Union of Operating Engineers Local 796 (Applicant) v. Ace Properties (Toronto plant) (Respondent). (2 employees).

7667-63-R: International Hod Carriers' Building and Common Labourers' Union of America (A.F.L.) (C.I.C.) Local 527 (Applicant) v. Romfield Building Corporation (Respondent). (6 employees).

7681-63-R: International Union of Operating Engineers Local 796 (Applicant) v. Webb & Knapp (Canada) Ltd. (Respondent). (4 employees in the unit).

7700-63-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Mayfair Hotel Ltd. (Respondent). (31 employees).

7744-63-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Globelite Batteries Limited Eastern Division (Respondent). (10 employees).

APPLICATIONS FOR TERMINATION DISPOSED OF DURING FEBRUARY 1964

7039-63-R: Paul Spencer (Applicant) v. Office Employees International Union Local 131 AFL-CIO (Respondent). (WITHDRAWN). (64 employees).

(Re: Dunlop Canada Limited,
Toronto Plant)

7108-63-R: Elmer Carl Dickhout (Applicant) v. General Truck Drivers Local Union No. 879, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondent) v. Phillips Transports Limited (Intervener). (GRANTED). (68 employees).

(Re: Phillips Transports Limited,
at or working out of Toronto, Hamilton, Welland,
Port Colborne, Dunnville, Simcoe, Tillsonburg, Aylmer,
St. Thomas and Port Maitland, Ontario)

(SEE INDEXED ENDORSEMENT PAGE)

Number of names on eligibility list	68
Number of ballots cast	68
Number of ballots marked in favour of respondent	19
Number of ballots marked as opposed to respondent	49

7359-63-R: Peter Bruchell (Applicant) v. Textile Workers Union of America CLC, AFL-CIO (Respondent). (GRANTED). (17 employees).

(Re: J.L. White Yarns Ltd.,
Fenelon Falls, Ontario)

Number of names on revised eligibility list	16
Number of ballots cast	16
Number of ballots marked in favour of respondent	0
Number of ballots marked as opposed to respondent	16

7513-63-R: Richard Fedgenhaeuer, representing members of Shop Local 734 (Applicant) v. Shopmens Local #734 of the International Association of Bridge, Structural and Ornamental Iron Workers (Respondent) v. The Hamilton Guild of Metalcrafts Ltd. (Intervener). (GRANTED). (9 employees).

(Re: The Hamilton Guild of Metalcrafts,
Hamilton, Ontario.)

Number of names on revised eligibility list	7
Number of ballots cast	7
Number of ballots marked in favour of respondent	3
Number of ballots marked as opposed to respondent	4

APPLICATIONS UNDER SECTION 79 DISPOSED OF DURING FEBRUARY 1964

7058-63-II: Herman Luks (Applicant) v. United Electrical Radio and Machine Workers of America, Local 512 and Anchor Cap and Closure Corporation of Canada Limited (Respondent).

The Board endorsed the Record as follows:

"The Board's hearing in this case was held on November 25th, 1963. An examiner was appointed on December 23rd, 1963, and the time for submitting objections to his report had long since expired when the applicant by his letter of January 28th requested the Board, in part, as follows:-

- 1) to postpone the decision in this matter until my new application, or if the Board wishes to go ahead and make a decision I wish to advise the Board,
- 2) that the applicant wishes to withdraw his complaint.

In view of the voluminous correspondence which we have received from the applicant in which numerous

matters of complaint have been alleged against the union and the employer, and the fact that the applicant has raised issues which, if not decided, will likely continue to affect and cause problems for the other parties, and having regard to the time of his request and the contents of his letter of January 28th, we believe that this is a proper case for the Board to decline the applicant's request to withdraw his application. Moreover, in view of all the circumstances and the nature of his complaints, we are constrained to find that the Board should not dismiss the application without first dealing with it on the merits.

The Board has carefully considered the evidence contained in the examiner's report relating to the duties and responsibilities of the applicant, Herman Luks. We are impelled on the basis of this evidence to find that Herman Luks does not exercise managerial functions. In the circumstances, it is unnecessary for us to decide whether a person as distinct from a trade union or employer may, under section 79(2) of The Labour Relations Act, refer to the Board the question as to whether he is an employee under the Act which he alone claims has arisen during the operation of a collective agreement.

We have also given careful consideration to the various other matters complained of and relief sought by the applicant. We are unable to find that any of these other complaints constitute matters which, having regard to the allegations and arguments made by the applicant, should or can be inquired into by this Board under any of the provisions of the Act."

7326-63-M: Rothmans of Pall Mall Canada Limited (Applicant) v. International Union of Operating Engineers, Local 796 (Respondent).

The Board endorsed the Record as follows:

"We find that Lawrence Luxmore exercises managerial functions and is therefore not an employee of the applicant for the purposes of The Labour Relations Act."

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING
FEBRUARY 1964

7578-63-U: Building Service Employees' International Union, Local 183, Belleville, Ontario (Applicant) v. Trenton Memorial Hospital (Respondent). (WITHDRAWN).

7712-63-U: Star Transfer Limited (Applicant) v. R. Bagley et al (Respondents). (GRANTED).

The Board endorsed the Record as follows:

"The Board consents to the institution of a prosecution against 21 of the respondents in this matter for the following offence alleged to have been committed: that the said 21 persons did contravene section 54(1) of The Labour Relations Act in that they did engage in an unlawful strike on January 30th, 1964."

Board Member D. M. Storey dissented and said:

"I dissent. In the circumstances of this case, I would have exercised discretion in favour of the respondents and would refuse to grant consent to institute a prosecution."

COMPLAINTS : UNDER SECTION 65 (UNFAIR LABOUR PRACTICE)
DISPOSED OF DURING FEBRUARY 1964

6973-63-U: Building Service Employees' International Union, Local 183 (Belleville, Ontario) (Complainant) v. Trenton Memorial Hospital (Respondent).

7063-63-U: United Steelworkers of America (Complainant) v. Rosco Metal Products Ltd. (Respondent).

(WRITTEN REASONS).

7539-63-U: International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Local 419, Warehousemen and Miscellaneous Drivers (Complainant) v. United Farms owned and operated by Fairway Produce Co. Ltd. (Respondent).

7545-63-U: Retail Clerks International Association (Complainant) v. Sentry Department Stores Limited (Respondent).

7552-63-U: United Steelworkers of America (Complainant) v. Heath & Sherwood Diamond Drilling Co. Ltd. (Respondent).

7563-63-U: Robert McCarty (Complainant) v. Wood Wire & Metal Lathers Union Local 360, London Ontario (Respondent).

7590-63-U: United Electrical, Radio and Machine Workers of America (UE) (Complainant) v. Electronics Corporation of America (Canada) Ltd. (Respondent).

7608-63-U: Food Handlers' Local Union 175, Amalgamated Meat Cutters and Butcher Workmen of North America (Complainant) v. George L.J. Trottier, (carrying on business under the firm name and style of Delhi I.G.A. Food Market) (Respondent).

The Board endorsed the Record as follows:

"The complainant complains that Mrs. Annie Lewis was discharged from her employment as a cashier, by the respondent on January 18th, 1964 contrary to the provisions of section 50 (a) of The Labour Relations Act and seeks reinstatement of Mrs. Lewis in her former employment together with compensation in full for loss of wages.

George L.J. Trottier owns and operates his I.G.A. Food Market in Delhi and at the time of Mrs. Lewis' discharge this supermarket was managed by Roger Trottier, a brother of George Trottier.

On December 12th, 1963, the Board dealt with a complaint made against the respondent on behalf of Mrs. Lewis wherein it appears that the respondent reduced the working hours of Mrs. Lewis and alleged that the hours of work of Mrs. Lewis were reduced because she was the least efficient of the full-time cashiers. The Board in its decision of December 12th, 1963, found, inter alia, that "...Annie Lewis was by no means the least efficient of the three full-time cashiers. It is clear that she had more experience, seniority and responsibility than the other two cashiers. Moreover, we find no substance in the specific allegations of her shortcomings in carrying out her duties. The fact that she is still largely responsible for the functions at which she is alleged to lack competence, even while working reduced hours, seems to confirm our assessment of the evidence with respect to her job efficiency."

The Board in its decision of December 12th, 1963, refused to accept certain testimony of the respondent and found that Mrs. Lewis had been dealt with by the respondent contrary to section 50 (a) and directed that she be reinstated by the respondent as a full-time cashier.

The respondent complied with the Board's direction above referred to and reinstated Mrs. Lewis in her employment on December 16th, 1963.

The respondent in the instant case takes the position that Mrs. Lewis was discharged for cause in that she was in breach of store rules and was inefficient,

by reason of mistakes in price changes, shortages in cash and acceptance of a cheque without approval.

The evidence relating to the first allegation of inefficiency related to an event which took place on December 16th, 1963, the first day Mrs. Lewis returned to work. It appears that Mrs. Lewis was instructed to effect price changes on 76 items wherein it was required of Mrs. Lewis that she mark a new price on each separate item on the shelf and, in addition, to change the price tags affixed to the shelf itself. On December 16th immediately after this work was completed by Mrs. Lewis, George Trottier and Roger Trottier rechecked the work performed by Mrs. Lewis and brought to her attention 10 alleged errors.

Mrs. Lewis testified that the shelf tag was changed in accordance with the price change listed in each instance. She further testified that the prices on the items which were on the shelf at the time she made the price changes were in fact changed with the possible exception of one or two instances where her recollection was not clear. Some of the alleged errors were caused by the fact that the shelves were reloaded by a grocery clerk after the price changes were made by her on the existing items that were on the shelf. In another instance Mrs. Lewis admitted that she might have overlooked one brand because of the fact that it was located in a different place on the shelf than customary. In each of the other instances, Mrs. Lewis stated that the price changes were made by her.

George Trottier by a letter addressed to Mrs. Lewis dated December 17th, 1963 (which was not handed to Mrs. Lewis until approximately one week later) enumerated the 10 alleged errors. At the hearing George Trottier admitted that two of the items listed in his letter of December 17th, 1963 were not in fact errors on the part of Mrs. Lewis and one or two other errors might not have been caused by Mrs. Lewis. George Trottier was unable to explain why these items were included in his letter of December 17th when they were not in fact the fault of Mrs. Lewis.

Although George Trottier claimed that the shelf tags on the items set forth in his letter dated December 17th, 1963, had not been changed, Roger Trottier testified that he did not see any errors on the shelf price tags. Roger Trottier further testified that since December 16th, 1963, he has been unable to find any further errors on price changes made by Mrs. Lewis.

Roger Trottier testified that on January 4th, 1964, Mrs. Lewis had a cash register shortage of \$10.45 and on January 11th, 1964 she had a further cash register shortage of \$4.65. He further testified that while small shortages are common, shortages in excess of \$3.00 are comparatively rare. In addition to shortages there are overages. It has been the policy of the respondent to offset the shortages against the overages and not require any accounting by the cashier.

Roger Trottier also testified that one former employee who was released from employment in January 1964 had a shortage of \$17.00 in October or immediately prior to the month of October, 1963. No action was taken against that employee at that time. When Mrs. Lewis' shortages were brought to the attention of Roger Trottier by the bookkeeper, he did not discuss the matter with Mrs. Lewis. When these shortages were brought to Mrs. Lewis' attention at the time of her discharge, Mrs. Lewis undertook to reimburse the respondent for the amount of the shortages but the respondent refused to accept repayment.

The evidence indicates that while each cashier employed by the respondent has a specific cash register assigned to her, the cashiers are not provided with keys. While the cashiers are absent on their lunch hours or their work breaks, there are no facilities for locking the cash registers and on occasion other cashiers had in fact used the cash register which had been assigned to someone else.

The final allegation against Mrs. Lewis is that she cashed a personal cheque in the amount of \$72.00 which was tendered by a customer and that this cheque was returned by the bank marked N.S.F.

The cheque cashing procedure of the respondent is worthy of mention. It appears that the bookkeeper or store manager normally approve all personal cheques that are cashed at the store. However, if the store manager and bookkeeper are both absent the practice was to authorize one of the cashiers to approve cheques. Although this authority has never been given to Mrs. Lewis by Roger Trottier who has been manager of this store since December 7th, 1963, the previous two store managers had in fact given this authority to Mrs. Lewis. In addition, because of Mrs. Lewis' knowledge of the customers, the two previous store managers have requested Mrs. Lewis to identify customers and indicate whether she considered them to be a good risk even

where the store manager initialed the approval on the cheque. Mrs. Lewis further testified that it has been her practice to cash cheques from customers whom she knew, without the approval of the store manager or bookkeeper when neither was readily available, and that this practice has never before been criticized by the store manager. At the time the cheque in question was cashed, the store manager was in the back room of the store and was not readily available.

Roger Trottier testified that since he took over his duties as a store manager in December, 1963, he had a meeting of the store staff and instructed them on store rules and cheque cashing procedures. However, he further testified that this was during the time when Mrs. Lewis was working short hours and she was not present at this meeting. Roger Trottier further testified that at no time did he specifically instruct Mrs. Lewis with respect to cheque cashing procedures.

Mrs. Lewis testified that the customer who tendered the \$72.00 cheque was known to her and that she had cashed previous cheques tendered by him. In any event it would appear from the testimony of George Trottier that there was some confusion with respect to this cheque due to the fact that the customer had changed his bank from the Toronto Dominion Bank to the Bank of Montreal and he subsequently paid to the respondent in cash the amount of \$72.00 on account of the N.S.F. cheque. The customer was given a receipt by the bookkeeper at the time of the repayment and a carbon copy of the receipt was tendered in evidence by the respondent. However, the date on the carbon copy of the receipt has been altered in ink and while the altered date is January 28th, 1964, Mrs. Lewis testified that she was informed by the bookkeeper that the money had in fact been repaid on January 18th, 1964.

The respondent further admitted that while none of these allegations of inefficiency or breach of store rules alone would justify the discharge of Mrs. Lewis, the respondent took the position that these events having taken place over a short period of time, when taken together would justify her dismissal.

Upon considering the evidence of Mrs. Lewis and the evidence of Roger Trottier and George Trottier, their demeanour in the witness stand, the fact that at least part of the letter of December 17th, 1963 is admitted to be a fabrication, we are not prepared to accept the testimony of Roger Trottier and George Trottier in preference to the testimony of Mrs. Lewis

where there is conflict. We find Mrs. Lewis to be a truthful witness.

We find that the letter of December 17th, 1963 is a patent attempt on the part of the respondent to mislead the Board by attempting to discredit Mrs. Lewis. While correct documentation of the employment history of employees is desirable, it appears from the evidence in this case that only the employment history of Mrs. Lewis was chosen for documentation and that while other employees made errors these were not documented.

Having regard to all the evidence and in particular to the testimony relating to the price changes, the fact that the letter dated December 17th, 1963 included items which are admitted by the respondent not to be the fault of Mrs. Lewis and were known by the respondent not to be the fault of Mrs. Lewis at the time the letter was written; the fact that there had been no subsequent errors in pricing; the fact that the respondent had followed a procedure of offsetting shortages with overages which appeared on the cash register receipts; that there has been no accounting at the hearing with respect to shortages and overages and the fact that reimbursement for the cash register shortage by Mrs. Lewis was refused; the fact that no action was taken against another cashier at the time she had a \$17.00 shortage; the fact that other persons have access to the cash in the cash register and on occasion have used cash registers for which another cashier is responsible; the fact that other store managers have specifically authorized Mrs. Lewis to approve all cheques on specific occasions; the fact that Mrs. Lewis had often cashed cheques without written approval when the manager and bookkeeper were not readily available; the fact that she had cashed other cheques for this specific customer; the fact that no disciplinary action was taken against Mrs. Lewis when the N.S.F. cheque first came to the attention of the respondent and the fact that no financial loss was suffered with respect to the cheque, we are of opinion that the events complained of were not in fact the reason for the discharge of Mrs. Lewis.

Having regard to all the evidence, we are satisfied that the respondent engaged in a campaign to attempt to build a case against Mrs. Lewis in order to try to justify the allegation that Mrs. Lewis was discharged for cause. It is very apparent that the respondent selected Mrs. Lewis for special treatment from the very day she was reinstated in her job on December 16th, 1963. We are satisfied that when Mrs. Lewis returned

to work the respondent had no intention of keeping her and was determined to get rid of her.

We find the respondent has deliberately attempted to mislead the Board. There is no evidence of any probative value which would indicate that Mrs. Lewis was inefficient. In view of the cheque cashing procedures practiced and encouraged by previous store managers which remained unaltered in so far as Mrs. Lewis was concerned, we are not satisfied that she was in fact in breach of cheque cashing procedures, as she knew them.

In any event we are convinced that the reasons given by the respondent for her discharge were in fact a subterfuge for the real reason of dismissal. We find that the real reason for the dismissal of Mrs. Lewis was the fact that she was known by the respondent to have supported the complainant union.

The Board is satisfied that the respondent discharged Mrs. Lewis in contravention to section 50 (a) of The Labour Relations Act.

At the time of her discharge Mrs. Lewis was earning \$52.00 per week. We therefore determine that:

- (a) Mrs. Annie Lewis shall be reinstated forthwith in the position she held at the time of her discharge;
- (b) that the respondent pay to Mrs. Lewis an amount equal to the loss of earnings and employment benefits sustained by Mrs. Lewis between the date of her discharge and the date of her reinstatement.
- (c) that the parties meet forthwith with a view to agreeing on the amount of the loss of earnings that Annie Lewis sustained by reason of her having been discharged contrary to the Act between the date of her discharge and the date of her reinstatement;
- (d) in default of an agreement between the parties on the amount referred to in paragraph (c) hereof within fourteen days after the release of this determination or within such further period as the parties may mutually agree upon, at the request of either party, the Board will hold a further hearing at which the parties will have the opportunity to present evidence and make representations as to the amount to be paid to Annie Lewis."

Board Member M. C. Hay dissented and said:

"I dissent.

My colleagues and I are in disagreement, not only as to the credibility of witnesses herein, but also as to what in some instances constitutes the evidence in this case. I see no useful purpose in delineating these differences except to say that on the basis of the evidence which I accept in this matter, and the logical and reasonable inferences to be drawn therefrom, I find that the complainant's employment was terminated by the respondent by reason of the inefficient performance of her job duties and for breach of store regulations of which she was well aware.

In arriving at my decision I am uninfluenced by, and attach no evidentiary value to, the conclusions reached in an earlier decision of another and differently constituted panel of the Board involving the same parties. The evidence upon which the decision was reached in that case is not before me.

In my opinion, union membership should not provide an immunity from discipline or discharge in a proper case. Accordingly on the evidence in this case I would dismiss the complaint."

7674-63-U: United Brotherhood of Carpenters & Joiners of America Local Union 2968 (Complainant) v. Temuss Products Canada Ltd. (Respondent).

7690-63-U: United Steelworkers of America (Complainant) v. Leigh Metal Products Limited (Respondent).

7711-63-U: United Steelworkers of America (Complainant) v. Natweld Steel Products Company Limited (Respondent).

7716-63-U: John H. Monk (Complainant) v. Stanley Newmarch and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union #46 (Respondent).

CERTIFICATION INDEXED ENDORSEMENTS

6262-63-R: Retail Clerks International Association (Applicant) v. Sentry Department Stores Limited (Respondent). (DISMISSED FEBRUARY 1964).

On January 30th, 1964 the Board endorsed the Record as follows:

"This application previously came on for hearing at Sarnia on November 22nd, 1963. In view of certain problems raised at that time, which are not material for present purposes, the hearing was adjourned sine die, or in other words, without any date being given for its continuation. Later, and after giving consideration to the problems raised at that hearing and to a motion made by the respondent asking the Board to dismiss the application without a further hearing, the Board directed the case to be re-listed for, and it thereafter came on for continuation of hearing, at Sarnia on January 3rd, 1964.

At the hearing at Sarnia on January 3rd, the applicant called only one witness to give evidence on its behalf, namely, one Mrs. Mary Eady. While the representative of the applicant claimed he had summoned other witnesses to attend the hearing held on November 22nd to give evidence on behalf of the union, and that these persons had been notified by telegram to attend the hearing held on January 3rd, none of them attended the hearing held on the latter date. It was made abundantly clear by the applicant that while the proposed witnesses may have been handed summonses and given conduct money to appear at the hearing held on November 22nd, 1963, none of them was personally served with a fresh summons to attend the hearing held on January 3rd. Relying on these facts, the applicant requested the Board to issue warrants of arrest for the apprehension of the persons in question as defaulting witnesses.

In the circumstances, the Board had no hesitation in ruling that there was no basis to issue warrants of arrest for the apprehension of any of these persons.

In order to be valid, a summons, like a subpoena in court, must be served personally upon the person to whom it is directed. This service must take place within a reasonable time prior to the time when the witness is required to attend to testify and the witness must also be given proper conduct money and, if necessary, a proper sum of money for his travelling and accommodation expenses. The summons, of course, like a subpoena, must, among other things, state the time and place at which the person is required to attend. In this respect, the form of summons issued by the Board stipulates the time and place at which the witness is required to attend and then goes on to state "and so from day to day until the hearing is concluded - -". A witness properly served with a summons is, therefore, required to attend and to

remain in attendance throughout the hearing and from day to day so long as his presence is required. Where the hearing does not continue from one day to the next but is adjourned to another stated date, the witness, unless excused from attendance, and provided he has received proper conduct money and any money to which he may be entitled for expenses, is also required to attend on the date stated for continuance of the hearing. A witness summoned to a hearing which is adjourned sine die is, however, under no compulsion to attend a new hearing unless he is personally served with a fresh summons requiring his attendance at the time and place of such hearing and given proper conduct money and such money for expenses, if any, as he may then be entitled, according to the rules followed by a court in civil cases. In other words, the service of the summonses for the prior hearing is not, in such circumstances, effective to require the attendance of the witnesses at the new hearing.

Where a person who has been served with a summons to give evidence does not attend or remain in attendance at a hearing as required, the Board will not consider the issuance of a warrant for his arrest as a defaulting witness unless it is established, (1) that the summons has been served in strict compliance with all the requirements imposed by a court in civil cases and (2) that the presence of such person is material to the ends of justice. (See Rule 275 of The Consolidated Rules of The Supreme Court). Needless to say, the issuance of a warrant for the arrest of a defaulting witness is a most serious step affecting the personal liberty of the individual and should not be considered by this Board unless the circumstances plainly substantiate the necessity for such action.

Following the refusal of the Board to issue warrants of arrest as requested, the representative for the applicant then asked for an adjournment. He stated that his staff had been on holidays and his office closed between December 24th and January 2nd, and that for this reason he had not had adequate or sufficient opportunity to obtain and serve new summonses on these witnesses.

The Board's notices for the hearing to be held on January 3rd were mailed on December 23rd, 1963, by registered special delivery post to all the parties, including two representatives of the applicant at their addresses given for service in Toronto and Ottawa. While the representative for the applicant states that both his office in Ottawa and the office

in Toronto were closed from noon on December 24th until January 2nd, 1963, he admits that he was in his office on December 30th, and saw the letter from the Board containing the notice of hearing for January 3rd open on his desk. He explained that he had an arrangement with the occupants of an adjoining office to open and check his mail. However, they apparently did not advise him of the contents of this letter before he saw it himself on December 30th. He states that when he saw the Board's notice of the hearing, he attempted to telephone the representative of his union in Toronto concerning the case but could not reach him. It is significant that he did not request an adjournment at this time nor at any other time before the hearing as might have been expected had he felt that he needed more time, to prepare his case and to serve summonses on his witnesses. Apparently, he did not attempt to do anything further about the matter until the day before the hearing, when he arranged with the representative in Toronto to obtain new summonses from the Registrar of the Board. He now claims, however, that because of the short time available before the hearing, and the fact that some of the witnesses were evading service, he was not able to effect personal service of the new summonses on them in time for the hearing on January 3rd.

It cannot be overlooked that service of all previous notices of the Board in these proceedings had been effected on, and accepted by the applicant by registered special delivery post delivered to the addresses given for service in Ottawa and Toronto. If one party to proceedings before the Board, without notice to the Board, decides, for its own purposes, to close down its offices at its address for service, during days when the Board's offices are open and when the party must be taken to know that notices affecting it may, as in the past, be delivered there by the Board, and that party does not give the Board an alternative address for service, then in fairness to the other parties, it is difficult to understand how such party can be heard to complain if notices delivered to its address for service are not promptly brought to its attention. In all the circumstances, there was an obvious responsibility on the union to ensure that any further Board notices which were delivered to these addresses for service would come to its attention, and if necessary, be acted upon, by its representatives as soon as they were received.

Similar applications for warrants of arrest and an adjournment were made by the applicant at the hearing held on November 22nd. It was manifest at that time that the applicant had waited until the day before the

hearing before making any attempt whatever to serve its witnesses. The representative for the union then complained that his belated attempts to serve the witnesses were abortive because they were evading service. At that time the Board pointed out to the applicant that it had the responsibility to ensure that its witnesses were served personally and properly with summonses within a reasonable time before they would be required to attend the hearing. Notwithstanding this caution, and the difficulty which it experienced previously in serving the witnesses, the applicant again waited until the eleventh hour before attempting to serve summonses on its witnesses for the hearing held on January 3rd. While the applicant claims that some of the proposed witnesses were evading service, there is nothing to indicate that the applicant would not have been successful in serving them had it been more prompt and reasonable in its efforts to do so. We are not persuaded that the applicant did not have adequate and ample opportunity, had it been diligently pursuing the interests of its own case, to obtain and serve fresh summonses on all the witnesses in question for their attendance at the hearing held on January 3rd.

It is material to refer to the remarks of the Board in its decision in the Fort Henry Hotel Case, Dominion Labour Service 7-2125,

The power of the Board to summon persons and to enforce the attendance of witnesses is set out in section 3, subsection 7 of The Labour Relations Act, 1948 [now section 77(2)(a) of the present Act]. That subsection provides that the Board 'shall have the like power to enforce the attendance of witnesses . . . as is vested in any court in civil cases'. No provision is made in the Act or in the Regulations for the payment of witness fees to persons summoned to appear before the Board. It is the opinion of the Board, however, that the reference to the court contained in the subsection warrants the conclusion that the same requirements apply to service of a Board summons as attached to service of a subpoena of a court in a civil case. It follows that proper service was not effected in the present cases. There can, for example, be no question of enforcing the attendance of the witnesses concerned in answer to the summonses which they have received. To find that service of the summonses was ineffective and that, in consequence, the summonses need not be answered, and then to undertake to hold the hearings over again and to issue fresh summonses

(as we would be obliged to do at the request of the applicants) would be to make that finding, for all practical purposes, meaningless. Furthermore, the Board is anxious to ensure that the practice which has grown up of serving persons summoned to appear before the Board in the manner required by the courts and of paying witness fees on the Supreme Court scale be continued. That practice is not likely to be encouraged if re-hearings (and fresh summonses) may be obtained wherever service was defective in the first instance. The Board is therefore not disposed to grant the request of the applicants for new hearings.

In the result, the applicant's request for an adjournment to permit it to serve new summonses on these witnesses must be denied."

6851-63-R: Chatham Construction Workers Association, Local No. 53, Affiliated with the Christian Labour Association of Canada (Applicant) v. Ben Bruinsma and Sons Limited (Respondent). (GRANTED OCTOBER, 1963).

On February 4, 1964 the Board further endorsed the Record as follows:

"Although a certificate has already issued in this matter, there remains for determination the question as to whether the applicant is a trade union "that according to established trade union practice pertains to the construction industry" within the meaning of section 90(b) of The Labour Relations Act.

It is clear from the evidence that the applicant trade union "pertains to the construction industry". (See in particular Articles 1 and 111 of its Constitution) The sole question, then, is what meaning ought to be given the words "that according to established trade union practice . . ." It is our considered view that if it had been the intention of the Legislature that the Board have regard only for the union constitution, there would have been no necessity for including in the definition the last quoted words. If the Legislature had intended the Board to consider only the union constitution then it seems to us the definition would have read, quite simply, "trade union means a trade union that pertains to the construction industry".

Some other meaning, therefore, must be given the words "that according to established trade union practice . . ." That practice in our opinion has to be

established by ascertaining the collective bargaining history of the union, both local and parent. If the practice as ascertained by an examination of the union's collective agreements is to bargain for workers employed in the construction industry, then the union has satisfied the requirement "according to established trade union practice".

In the case at hand, the evidence is that the applicant Local has not entered into any collective agreements pertaining to the construction industry - or for that matter, any collective agreements. The applicant, however, relies on the fact that another local union affiliated with the same parent organization as the applicant, has entered into a collective agreement with an employer in the construction industry.

Assuming, but without deciding, that in the circumstances of this case including the fact that the parent organization is not one whose objects are related solely or even primarily to organizing in the construction industry, the applicant would be entitled to rely on the practice of another local, we are not disposed to hold that entering into one collective agreement constitutes an established practice. It may be that if more than one local enters into such agreements or if one local enters into several agreements, a stronger argument could be presented to the Board. However, we are not called upon to deal with that situation here.

Having regard to the above considerations, the Board finds that this is not an application falling within section 92 of The Labour Relations Act."

7165-63-R: International Union of Operating Engineers, Local 700 (Applicant) v. St. Peter's Infirmary (Respondent) v. Local Union No. 778, Canadian Union of Public Employees (Successor Trade Union to Local Union No. 778, National Union of Public Employees) (Intervener). (GRANTED FEBRUARY 1964).

On January 9, 1964 the Board endorsed the Record in part as follows:

"The Board has given careful consideration to the oral and written representations of the applicant and the intervener as to whether the intervener, having filed its intervention after the terminal date fixed by the Board, should be permitted to make representations as to the appropriateness of the bargaining unit sought by the applicant.

In an endorsement dated November 14th, 1963, the Board directed that the ballot box containing the ballots cast in the pre-hearing representation vote be sealed and the ballots not counted pending a further direction. The Board, in the same endorsement, further directed that this matter be listed for hearing following the taking of the pre-hearing representation vote to afford the parties an opportunity to make representations with respect to the appropriateness of the bargaining unit proposed by the applicant. In these circumstances and having regard to section 8 subsection (3) of The Labour Relations Act, the Board is of the opinion that the intervener is entitled to make its representations as to the appropriateness of the bargaining unit.

In arriving at its decision, the Board has taken into account the fact that even if the intervention had been filed by the terminal date, representations by the parties as to the appropriateness of the bargaining unit would not have been entertained by the Board until after the taking of the representation vote. Accordingly, in our view, the position of the applicant has not been prejudiced. We would add, however, that in circumstances where an intervention by an incumbent trade union is not filed until after the ballots have been counted and the wishes of the employees in the voting constituency become known, or where some prejudice to the applicant is demonstrated, the Board might take a position other than that adopted in the instant case."

TERMINATION INDEXED ENDORSEMENTS

7108-63-R: Elmer Carl Dickhout (Applicant) v. General Truck Drivers Local Union No. 879, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondent) v. Phillips Transports Limited (Intervener). (GRANTED FEBRUARY 1964).

(Re: Phillips Transports Limited,
at or working out of Toronto, Hamilton, Welland,
Port Colborne, Dunnville, Simcoe, Tillsonburg, Aylmer,
St. Thomas and Port Maitland, Ontario)

On January 14, 1964 the Board endorsed the Record in part as follows:

"We have carefully considered all the evidence led by the respondent in support of its contention that this application for termination of bargaining rights is untimely due to the existence of a collective

agreement. We are unable to find that any of the documents submitted to us constitute a collective agreement within the meaning of section 1 (1) (c) of The Labour Relations Act.

The document dated July 29th, 1963, is an agreement between the representatives of the parties to recommend to their respective principals that they accept certain terms of settlement, some of which are set out and stipulated in writing therein and some are not set out but are merely referred to as having been previously agreed to orally between the parties. In any event, it is abundantly clear that (a) this document was not intended to constitute a collective agreement; (b) it is not a document in writing signed by the parties of all the matters which the respondent claims come within it as a collective agreement; (c) apart from the mutual obligations on the part of the signatories thereto to recommend the acceptance of the terms contained or referred to in the document, it was not intended to be binding between the party principals without further mutual communications of acceptance from the principals and these, of course, did not take place; (d) on the face of it, the signatories signed on behalf of themselves not their principals; (e) it was the intention of the parties that if the terms indicated in the document were accepted, and not rejected as they plainly could have been, by the principals, the parties would then meet to agree on the details of the matters in question and how and in what language these would be set out in a collective agreement to be executed by them. In these circumstances, we are constrained to find that the present application for termination of bargaining rights is properly within the time provisions contemplated by section 46 (1) of The Labour Relations Act."

INDEXED ENDORSEMENT IN CONCILIATION APPLICATIONS

7541-63-C: Local 543, Canadian Union of Public Employees (Applicant) v. The Board of Commissioners of Police for the City of Windsor (Respondent). (DISMISSED FEBRUARY 1964).

The Board endorsed the Record as follows:

"The applicant has applied to the Board and has requested that conciliation services be made available to the parties.

On January 23rd, 1957, the applicant was certified by this Board as bargaining agent for all "motor mechanics and helpers employed in the Police Garage of the respondent".

The applicant and the respondent were parties to an agreement which became effective January 1st, 1961 wherein it is stated that the respondent recognized the applicant "as the sole bargaining agent for all Motor Mechanics, Mechanics' Helpers and other employees of the Police Garage, not eligible for membership in the Police Association".

The parties agreed at the hearing in this matter that the employees whom the applicant claims to represent are civil employees of the respondent and do not have the power or functions of police constables or police officers. These employees repair and service the vehicles operated by police constables and police officers of the respondent. They are appointed by the Board of Police Commissioners and their remuneration and expenses are included in the estimates submitted by the respondent to the municipality.

Prior to the making of this application, the applicant and the respondent had met and bargained for the renewal of the agreement between them. The bargaining came to an end when the respondent raised the issue as to whether the garage employees of the respondent could be included in a bargaining unit represented by a trade union.

The Board's decision dated January 23rd, 1957 in this matter does not deal with the issue of the Board's jurisdiction. At the hearing in the instant case, the respondent argued that the garage employees are "assistants" of the police officers and police constables and accordingly are members of a police force within the meaning of section 13 of the Police Act, R.S.O. 1960, c. 298. The respondent therefore argued that the Labour Relations Act does not apply to the garage employees pursuant to the provisions of section 2(d) of The Labour Relations Act.

The parties agreed that the real issue before the Board was whether The Labour Relations Act applied to the garage employees of the respondent and the Board was requested to make its decision on this issue.

Having regard to the Board's decision in the Police Commission of the City of Sudbury Case, (1960),

C.C.H. Canadian Labour Law Reporter #16,161, and the decision of the Board in the Police Commission of the City of London Case, Board File #1632-61-R, Ontario Labour Relations Board Monthly Report, July 1961, page 135, we find that the unit of employees described above falls within the term "assistants" in the description of a police force under section 13 of the Police Act where there is a Board of police commissioners.

We further find that pursuant to the provisions of section 2 (d) of The Labour Relations Act, the Labour Relations Act does not apply to the garage employees of the respondent with whom we are here concerned and accordingly this Board has no jurisdiction to process this application further.

This application is accordingly terminated."

Board Member D. B. Archer dissented and said:

"I am of opinion that the issue raised by the respondent is a collateral matter which should only be dealt with by the Board in a representation application. However, if this issue can be properly dealt with in this application, I dissent from the majority decision for the reasons given by me in the Police Commission of the City of Sudbury Case. I would find that the garage employees for whom the applicant seeks to bargain are not members of a police force within the meaning of the Police Act and accordingly are not excluded from the provisions of The Labour Relations Act."

REQUEST TO CLARIFY THE INTENT OF BOARD'S CERTIFICATE

4235-63-R: Local Union 633 of the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO (Applicant) v. Homedale IGA Foodliner (St. Thomas) (Respondent). (GRANTED AUGUST 1962).

On February 5th, 1964 the Board further endorsed the Record as follows:

"On August 15th, 1962, the Board issued a decision certifying the applicant as the bargaining agent for,

all employees of the respondent in the meat departments of its stores in St. Thomas, save and except persons employed for not more than 24 hours per week and students hired for the school vacation period.

The applicant has asked the Board to clarify the intent of the Board's certificate in so far as it affects the employees of the respondent at its "stores in St. Thomas".

The applicant points out that after an agreement was signed on November 6th, 1963, the respondent opened a new store in St. Thomas. This agreement is now open for negotiation and a question has arisen as to whether the Board's certificate includes employees at the respondent's new store.

The Board, of course, cannot give any opinion, in this case, as to what effect, if any, the agreement or events occurring subsequent to the Board's decision may have had on the scope or continuation of the union bargaining rights as described in the Board's certificate. Suffice it is to say, however, that the Board's certificate when issued was based on the situation as it existed at the time of the application and hearing, and was intended to confer bargaining rights on the applicant, for all employees, with the exceptions stated, of the respondent in its meat departments of its then existing stores as well as for any other stores which the respondent may have opened thereafter in St. Thomas."

PART 2

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TABLE I

APPLICATIONS & COMPLAINTS TO THE ONTARIO LABOUR RELATIONS BOARD

	Feb. 1964	Number of applications filed 1st 11 months of fiscal year	
		63-64	62-63
I Certification	71	667	693
II Declaration Terminating Bargaining Rights	-	71	83
III Declaration of Successor Status	2	24	12
IV Conciliation Services	69	1004	1095
V Declaration that Strike Unlawful	-	29	30
VI Declaration that Lockout Unlawful	-	5	9
VII Consent to Prosecute	1	121	137
VIII Complaint of Unfair Practice in Employment (Section 65)	21	145	131
IX Miscellaneous	2	19	12
TOTAL	166	2085	2202

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	Feb. 1964	Number of applications filed 1st 11 months of fiscal year	
		63-64	62-63
I Certification	71	667	693
II Declaration Terminating Bargaining Rights	-	-	-
III Hearings & Continuation of or Hearings by the Board	79	924	1107
IV Conciliation Services	-	-	-
V Declaration that Strike Unlawful	-	-	-
VI Declaration that Lockout Unlawful	-	-	-
VII Consent to Prosecute	-	-	-
VIII Complaint of Unfair Practice in Employment (Section 65)	-	-	-
IX Miscellaneous	-	-	-
TOTAL	166	2085	2202

TABLE III

APPLICATIONS & COMPLAINTS DISPOSED OF BY THE ONTARIO
LABOUR RELATIONS BOARD BY MAJOR TYPES

	Feb. '64	Number of applications disposed of 1st 11 months of fiscal year	
		63-64	62-63
I Certification	66	706	764
II Declaration Terminating Bargaining Rights	4	92	83
III Declaration of Successor Status	-	28	4
IV Conciliation Services	96	1043	1077
V Declaration that Strike Unlawful	-	29	30
VI Declaration that Lockout Unlawful	-	4	9
VII Consent to Prosecute	2	133	134
VIII Complaint of Unfair Practice in Employment (Section 65)	15	147	135
IX Miscellaneous	3	16	17
TOTAL	186	2198	2253

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY TYPES AND BY DISPOSITION

Disposition	*Employees					
	Feb. 1st 11 mos. fiscal yr.	Feb. 1st 11 mos. fiscal	year			
	'64	63-64	62-63	'64	63-64	62-63
<u>I Certification</u>						
Granted	48	508	501	2029	15318	28868
Dismissed	11	123	197	432	3959	11956
Withdrawn	7	75	66	78	1082	2514
TOTAL	66	706	764	2539	20359	43338
<u>II Termination of Bargaining Rights</u>						
Terminated	4	65	54	94	1599	1629
Dismissed	-	23	23	-	514	532
Withdrawn	1	5	8	64	161	233
TOTAL	5	93	85	158	2274	2394

* Employees

These figures refer to the number of employees directly affected and are based on the number of employees in the bargaining units at the time the applications for certification were filed with the Board. Totals for applications dismissed withdrawn are approximate.

APPLICATIONS DISPOSED
OF BY BOARD (continued)

		Number of appl'ns disposed of		
		Feb. '64	1st 11 mos.	fiscal year 63-64 62-63

III Conciliation Services*

Referred	92	968	973
Dismissed	1	21	24
Withdrawn	3	54	80
TOTAL	96	1043	1077

IV Declaration that
Strike Unlawful

Granted	-	6	6
Dismissed	-	3	7
Withdrawn	-	20	17
TOTAL	-	29	30

V Declaration that
Lockout Unlawful

Granted	-	-	1
Dismissed	-	1	6
Withdrawn	-	3	2
TOTAL	-	4	9

VI Consent to
Prosecute

Granted	1	43	18
Dismissed	-	10	17
Withdrawn	1	80	99
TOTAL	2	133	134

* Includes applications for conciliation services re unions claiming successor status.

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED
OF BY THE BOARD

	NUMBER OF VOTES		
	Feb. 1st 64	11 months of 63-64	fiscal year 62-63
<u>*Certification After Vote</u>			
pre-hearing vote	3	23	34
post-hearing vote	2	54	32
ballots not counted	-	-	2
<u>Dismissed After Vote</u>			
pre-hearing vote	3	13	15
post-hearing vote	2	47	65
ballots not counted	-	2	1
TOTAL	10	139	149

* Includes applicant - intervener applications in which both applicant and intervener apply for a new unit and either applicant or intervener is certified.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF
BY THE BOARD

	Number		
	Feb. 1st 64	11 months of 63-64	fiscal yr. 62-63
<u>*Respondent Union Successful</u>			
Respondent Union Unsuccessful	3	30	27
TOTAL	3	35	32

* In termination proceedings where a vote is taken, the applicant is a group of employees, or the employer; the incumbent union is thus the respondent.

AN INTERIM REPORT OF CONSTRUCTION INDUSTRY DIVISION

ONTARIO LABOUR RELATIONS BOARD

PREFACE

In the fall of 1963, the construction industry division of the Ontario Labour Relations Board made an interim report on its activities to the other members of the Board. The period under review covered, approximately, the first year of the division's operations. It was agreed it might serve a useful purpose if parts of the report were made available to the general public. Much of the material that follows was included in the original report to the Board.

1. INTRODUCTION:

The purpose of this report is to review briefly some of the interim policies and procedures of the construction industry division. The report deals with problems arising from the terms "geographic area" as used in section 92(1) and the words "at the site thereof" as used in section 1(1) (da). Reference is also made to some decisions of the division which are of more general application. In addition, some of the procedures peculiar to construction industry cases are reviewed.

2. GEOGRAPHIC AREA:

(a) Board practice prior to introduction of amendments to the Labour Relations Act affecting the Construction Industry.

- (1) Where a trade union sought certification for a group of employees located at the regular or main business site of the employer - for example, employees, working in Toronto, of a company located in Toronto - then the normal practice was to grant an area consisting of Metropolitan Toronto or within a 25-mile radius of the Toronto City Hall.
- (2) Where an employer was away from his residence on a job in a locality for the first time, then the Board usually granted a project certification, for example, all carpenters and their apprentices employed by the company on the addition to the XYZ plant in Smith Falls.
- (3) If the employer opened a branch office at Smith Falls, or came back into the area for a second time, then the Board was likely to grant an area certification, for example, all carpenters and their apprentices employed at Smith Falls or employed at or working out of Smith Falls.
- (4) In granting an area certification, the Board had regard to the pattern or history of collective bargaining in the area, for example, the area might be the County of Essex or a 35 mile radius from the Sudbury Federal Building.

(b) Section 92(1) reads as follows:

"Where a trade union applies for certification as bargaining agent of the employees of an employer, the Board shall determine the unit of employees that is appropriate for collective bargaining by reference to a geographic area and it shall not confine the unit to a particular project."

The Legislation appears to have removed the project certification and directs the Board to grant certification on the basis of a geographic area. The legislation does not provide any guide as to what is meant by "geographic area".

(c) Current Board Policy:

The Construction Division found it necessary to issue some general policy statements in its early decisions so that the parties would have some indication as to how the Division intended dealing with the immediate situation. These policy statements are to be found in the following decisions:

Ball Brothers Ltd. O.L.R.B. Monthly Report,
 October, 1962, p. 236,
 November, 1962, p. 297;
 C.C.H., Vol. 1, Page 16,266

Andeen Construction Limited O.L.R.B. Monthly Report,
 November, 1962, p. 295;
 C.C.H., Vol. 1, Page 16,273.

Ball Brothers Limited O.L.R.B. Monthly Report,
 January, 1963, p. 432.

Mabco Construction O.L.R.B. Monthly Report,
 November, 1962, p. 247.

M. Sule Construction O.L.R.B. Monthly Report,
 November, 1962, p. 251.

Welcon Construction O.L.R.B. Monthly Report,
 December, 1962, p. 379.

In brief, these cases lay down the following general principles or statements of policy:

(1) The Board is not going to depart hastily from its previous policies regarding area certification.

(Andeen)

(ii) The Board is going to give management and labour an opportunity to seek mutually agreeable solutions.

(Andeen)

(iii) Should labour and management be unable to come to some kind of agreement or understanding, within a reasonable period of time, the Board may then undertake a review of its present policies in the light of its experience and the legislative directions contained in the recent amendments to the Act. (Andeen)

These same cases also contain the following more specific principles followed by the Board in determining what is an appropriate "geographic area" in a given case:

(i) The Board is prohibited from confining a bargaining unit to a particular project. (Andeen)

(ii) The Board will have regard to the history (Ball Brothers Ltd., Oct. /62) or pattern (Andeen) of collective bargaining in the area which the applicant or respondent claims to be appropriate. The Board will look not only to the pattern established, if any, by the particular union, but the general pattern established, e.g., the pattern evidenced say in Exchange agreements with a number of unions. On the other hand, there must be a uniformity of practice.

(iii) In ascertaining the pattern the Board will not distinguish between an international and a local or a district council of its locals, (Ball Brothers Ltd., Oct./62) providing it is the prevailing practice. In other words, if the pattern is established through agreements with a District Council, the fact that the applicant in a certification case is the International or a local will not prejudice the applicant's case.

(iv) Where the respondent is a non-resident contractor of the area sought by the applicant the Board will have regard to the pattern of collective bargaining with respect to non-residents of the area. (Ball Brothers Ltd., Oct./62, Newman Brothers Construction Ltd., O.L.R.B. Monthly Report, October, 1962, p.237, C.C.H. Vol 1, page 16,267).

(v) The Board may have regard to geographic areas which it has granted to a particular applicant, (M. Sule Construction Ltd.) or to other unions (Mabco Construction Company Limited), i.e. its own practice.

(vi) In stressing the importance of establishing a pattern or history of collective bargaining in a given area the Board is not saying that other factors will not be considered in any particular case. (Ball Brothers Ltd., Nov./62) Thus in M. Sule Construction Ltd. and Welcon Ltd. the Board stated that the geographical jurisdiction of a particular local union may well be one of the factors which the Board will take into consideration in determining what is an appropriate "geographic area" within section 92(1) of The Labour Relations Act.

(vii) The Board has spelled out in some detail what proof it will require of a union with respect to its territorial jurisdiction (M. Sule Construction Ltd.; Welcon Limited; Ball Brothers Ltd., Jan./63).

(a) The onus is on the union to establish before the Board, the extent of its jurisdiction.

(b) The Board will not normally accept a bare assertion by a representative that the union's jurisdiction extends over a certain "area". Particularly is this the case where the territorial limits are loosely defined or where there are other locals with apparent overlapping jurisdiction.

(c) If the jurisdiction is spelled out in the charter the Board would normally accept that as proof of the territorial jurisdiction of the local or district council.

(d) If the charter is silent the Board would be prepared to accept some document or writing approved by a representative of the parent union which document or writing spells out the extent of the territorial jurisdiction of the local or other subdivision of the parent.

(a) Examples of the application of current Board policy:

(i) Ball Brothers Ltd., Oct./62.

The Carpenters sought a 6- county unit consisting of Oxford, Perth, Huron, Middlesex, Bruce and Elgin.

The Respondent, a non-resident in the area, proposed an area consisting of the municipality where its current project was located.

The evidence established (1) that the Western Ontario District Council of Carpenters had a collective agreement with the General Contractors, Section of the London Builders Exchange for the six counties; (2) that a large number of contractors were bound by this agreement, and (3) that a considerable number of non-resident contractors had signed similar agreements with the District Council and this included one other contractor resident in the same municipality as the respondent.

The evidence supported the conclusion that the prevailing pattern of collective bargaining for both resident and non-resident contractors was the area proposed by the applicant and the Board accordingly certified for that area.

Although the applicant was the International, the Board accepted the pattern established by the District Council.

(ii) The Labourers have been certified for the same area. See Sam Cosentino Ltd., O.L.R.B. Monthly Report April, 1963, p. 15. The Labourers were also a party to the collective agreement with The London Builders Exchange.

(iii) Acting on similar evidence the Board certified both the Carpenters and Labourers for the Counties of Lincoln, Welland and Haldimand (Gardner Construction-Labourers, O.L.R.B. Monthly Report, October, 1962, p.217, Msbc Co Construction Company Limited-Carpenters.) In the Msbc Co case the Board not only referred to the collective agreement between the Niagara Peninsula Builders Exchange and the Greater Niagara Ontario Carpenter's District Council but also to the fact that the Board had recently issued certificates to the Labourers and Operating Engineers for the same geographic area.

(iv) In similar fashion the Board certified the Bricklayers for portions of 4 Counties (Wentworth, Halton, Lincoln and Haldimand) both for a non-resident contractor (Newman Brothers Construction Limited, O.L.R.B. Monthly Report, October, 1962, p. 237 C.C.H. Vol. 1. page 16, 267) and a resident contractor (Owen W. Smith Construction, O.L.R.B. Monthly Report, October, 1962, p.208) In these cases it was clear that the geographical area in the collective agreement which the applicant local had with the Masonry Contractor's Section of the Hamilton Builder's Exchange, coincided with the territorial jurisdiction of the applicant local.

(v) Previous Board practice, or the general prevailing practice in an area, may well be important factors to be considered where a union has no collective agreements - no bargaining history - in the area it asserts to be appropriate. To some extent this was the case in Pigott Structures Limited, O.L.R.B. Monthly Report, April, 1963, p. 6, where the Board certified the Rodmen for Lincoln, Welland and Haldiman. The Carpenters had been certified for the same company for this area. This was also the case in Unicrete Construction Limited, O.L.R.B. Monthly Report, July, 1963, p. 187, where the Hod Carriers applied for a job in Smith Falls and sought an area consisting of adjacent townships. In an earlier case, John Shore Construction Limited, O.L.R.B. Monthly Report, March, 1963, p. 503, the Board established the County of Lanark as an appropriate area for a carpenters' local in Smith Falls. The Board felt the same area should be given the Hod Carriers despite evidence of lack of pattern.

(vi) Other Examples of areas granted on the basis of established patterns of collective bargaining.

Plumbers: Kingston, the County of Lennox-Addington westerly from Kingston to Napanee, the Counties of Frontenac and Leeds and including that part of the County of Grenville west of Edward Street in the Town of Prescott. (Graves Bros. Ltd., O.L.R.B. Monthly Report, March, 1963, p. 503.)

County of Simcoe - E. S. Fox Plumbing and Heating Limited, O.L.R.B. Monthly Report, July, 1963, p.198.)

Tile, Terrazzo and Cement workers:

Kingston, Counties of Frontenac and Lennox-Addington but excluding the Township of Richmond. (Eastern Ontario Tile & Terrazzo Co. Ltd., - O.L.R.B. Monthly Report, March, 1963, p. 516).

Hod Carriers:

County of Kent (Amelia Construction (Chatham)
Ltd., O.L.R.B. Monthly Report, November, 1962, p. 248.)

County of Lambton (Matthews Construction
Company, O.L.R.B. Monthly Report, April, 1963, p. 14.)

Carpenters: County of Lanark (John Shore Construction
Limited, O.L.R.B. Monthly Report, March, 1963, p. 508)
In the Shore case the Board applied the Welcon case (see infra)
and refused the area sought by the applicant local which was
said to correspond to its geographic jurisdiction. However,
the Board concluded that the many agreements filed in support
of the application did in fact establish a pattern for Lanark.

County of Peterboro (E.G.M. Cape & Co. (1956)
Limited, O.L.R.B. Monthly Report, October, 1962, p. 207) In
this case the carpenters filed agreements covering Peterborough
and agreements which covered both Victoria and Peterborough.

In Northwestern Ontario, the Districts of Kenora, Rainy
River and Thunder Bay have each been found to be appropriate.

Thunder Bay - Alcan Colony Construction Company,
O.L.R.B. Monthly Report, March, 1963, p. 507 (engineers) and
Monthly Report for April, 1963, p. 14 (Hod Carriers).

Kenora - Walter Bergman Ltd., O.L.R.B.
Monthly Report, June, 1963, p. 126 (Carpenters).

Mills Steel Construction Company
Ltd., O.L.R.B. Monthly Report, April, 1963, p. 9 (Engineers).

Rainy River - Lee Turzillo Contracting Company,
O.L.R.B. Monthly Report, May, 1963, p. 70 (Carpenters).

In a number of instances the Division has granted areas
which have been in existence for some time, for example:

25 mile radius from Toronto City Hall plus Newmarket,
plus, now, an extension to the east;

35 miles from the City of Sudbury Federal Building;

20 miles from the North Bay post office; : : :
working at or out of Ottawa:

Barrie plus 20 miles plus the lands under the jurisdiction
of the Department of National Defence, Camp Borden.

In one case the Board took into consideration the nature of the craft. Thus in Alvin Tile Company Ltd., O.L.R.B. Monthly Report, June, 1963, p. 132, (as corrected in O.L.R.B. Monthly Report, Dec., 1963) the Board granted an "at and out of" unit rather than an area with definite boundaries because of the unchallenged representations of the applicant that tile and terrazzo mechanics and marble masons always returned to their residence after completing a job. There appears to be little or no on site hiring in this trade. See also Hill and Glasser Limited, O.L.R.B. Monthly Report, June, 1963, p. 129.

(e) Examples of cases where pattern not established:

The carpenters, having been successful in Ball Brothers Ltd., supra, in obtaining 6 counties, sought in the Andeen case, supra, to enlarge this area to 9 counties by the addition of Essex, Kent and Lambton. The respondent wanted the area restricted to Wingham.

In restricting the certificate to the 6 counties previously granted in Ball Brothers Limited, the Board noted that the applicant bargained separately with the Windsor Builders' Exchange for Essex and Kent and with the Sarnia Builders and Contractors Association for Lambton. While there was evidence that some employers had signed agreements with the Western District Council of Carpenters agreeing to be bound by these agreements as well as by the agreement which the Council had with the London Builder's Exchange, the Board was not prepared to say that in the circumstances this was sufficient to establish a new collective bargaining pattern.

In M. Sule Construction Ltd., O.L.R.B. Monthly Report, November, 1962, p.251, Local 2480 of the Carpenters, sought a geographic area consisting of the County of Simcoe.

From the decision it would appear that the area sought by the applicant was rejected by the Board on two main grounds:

(1) The pattern of collective bargaining in the area was not uniform. Thus:

(a) The only agreements local 2480 had were for the Barrie Area;

(b) While the Central Ontario District Council of which local 2480 was a member, had some collective agreements covering the county, at least one other local belonging to the Council had a current collective agreement with an employer covering the Township of Orillia, in the said County.

(2) The second main reason was that there was no evidence before the Board that the territorial jurisdiction of local 2480 extended beyond the Barrie area. (See now, however, P.R. Connolly Construction Ltd., O.L.R.B. Monthly Report, December 1963.)

A similar case, though on a much larger scale, is Ball Brothers Ltd., O.L.R.B. Monthly Report, January, 1963, p. 432.

The applicant, the United Brotherhood of Carpenters and Joiners of America, sought an area consisting of the major portions of some 9 counties or districts. The respondent, a non-resident contractor, proposed the Town of Collingwood.

In rejecting the area proposed by the applicant, which, it was alleged, comprised the territorial jurisdictions of all the locals comprising the Central Ontario District Council of Carpenters, the Board again relied on two main grounds:

(1) There was no written statement before the Board substantiating the allegation that the area sought was the jurisdictional area assigned to the locals comprising the Council;

(2) The evidence respecting pattern of bargaining failed to establish an established pattern of collective bargaining for the area sought by the applicant. Instead, it demonstrated that the prevailing practice was to have the locals or the Council enter into agreements for bits and pieces of the whole area without regard to uniformity. Thus:

(a) Although in the period 1956-58 the Council had entered into collective agreements with non-resident contractors for areas the same as or approximately the area sought by the applicant, the collective agreements of more recent vintage or currently in force did not in any way cover comparable areas.

(b) The current agreements for the most part were for townships, cities or single counties. The largest area was a two-county area remote from Collingwood, the site of the job affected by the application.

(c) There was no discernible pattern to be found in the geographic areas covered by the agreements whether entered into by a local or the District Council. Thus:

(i) Local 1450 had agreements covering both the City and County of Peterborough and the counties of Victoria and Peterborough.

(ii) The Council itself had entered into agreements covering 3 separate areas - namely - Simcoe County, The Township of Orillia, and Barrie and a 20 mile radius.

(iii) Other locals had agreements for smaller portions of Simcoe County.

(iv) There was, therefore, no well established pattern for Simcoe County.

The principles in the Sule and Ball Brothers' cases were followed in Robertson-Yates Corporation Limited, O.L.R.B. Monthly Report, May, 1963, p. 63.

There are two other points made in the third Bel Brothers Ltd. case, O.L.R.B. Monthly Report, January, 1963, p. 432, which deserve mention.

(1) The respondent company sought to introduce a new concept into the problem as to what constitutes an appropriate geographic area, namely, the concept of the "Labour Market Area" which it defined as a "a GEOGRAPHIC AREA WITHIN WHICH THERE IS A RESIDENT pool of labour available, offering its services continually and principally in the local labour market". The Board rejected this argument on two counts:

(a) That it would involve a departure from well established policies and the Board was not prepared to do so at this time.

(b) There was no evidence before the Board as to what constituted a "labour market area" or "areas" in the geographic area sought by the applicant and no evidence that Collingwood, the area proposed by the respondent, was a labour market area as defined.

(2) The respondent also submitted that if the Board were to grant large geographical areas based on collective bargaining patterns, then, having regard to the union security practices prevalent in the industry, the Board would in fact be denying employees in future unrelated projects their freedom under section 3 of the Act to join or not a union of their choice.

The Board rejected this submission on two grounds:

(a) It would mean a departure from well established policies, it being quite clear that even before the construction industry amendments the Board had granted certificates covering substantial areas.

(b) The matter was one of degree. The same problem, if indeed it is a problem, would arise whether the Board certified on the basis of several counties, a local labour market area or a Township. It seemed to the Board that the legislative answer was to be found in the right, under section 96 of The Labour Relations Act, to bring early termination applications.

Other examples where pattern not established:

In Tru-Line Construction Ltd., O.L.R.B. Monthly Report, March, 1963, p. 503, the Hod Carriers sought an area covering 9 counties or districts, namely: Cochrane, Timiskaming, Nipissing, Algoma, Sudbury, Thunder Bay, Manitoulin, Haliburton, Parry Sound and Muskoka. In rejecting the proposed area, the Board pointed out (1) while the applicant had some agreements covering the province it had not bargained specifically with respect to the area sought or any portion thereof; (2) other locals had bargaining rights for portions of the area sought; and (3) the geographical jurisdiction of the local included only a small portion of the area sought.

Mills Steel Construction Co. Ltd., O.L.R.B. Monthly Report, April, 1963, p. 9. The Engineers sought a province-wide unit, but the Board granted the District of Thunder Bay.

Welcon Limited (supra). A local of the Carpenters sought an area described as "in Perth and the area of Local 1988". The Board noted that there was no acceptable evidence before it as to the area jurisdiction of the local and that the collective agreements filed showed no consistent pattern, e.g., two described the area covered as "the area of local 1988", one as Perth plus 50 miles, one as Smith Falls plus 30 miles and one as Smith Falls plus 60 miles. The Board confined the unit to "at Perth".

In subsequent cases, however, the Board has granted this same local the County of Lanark. This was as a result of further evidence filed including more concrete evidence as to the jurisdiction of the local. See John Shore Construction Limited (*supra*) and Sirotek Construction Limited, O.L.R.B. Monthly Report, April, 1963, p. 11.

Failure to establish a clear-cut pattern by reason, chiefly, of the vagueness of description of the geographic area in the collective agreements relied on together with lack of evidence as to the extent of geographic jurisdiction, resulted in rejection of the area claimed in E.S. Fox Plumbing & Heating Limited, O.L.R.B. Monthly Report, July, 1963, p. 198.

In T.A. Andre and Sons Limited, O.L.R.B. Monthly Report, May, 1963, p. 70, and Dick Vandenbelt, O.L.R.B. Monthly Report, June, 1963, p. 125, failure of the applicants to file any evidence as to pattern was an important factor leading to rejection of the area sought by the applicants. In the Vandenbelt case, the Board noted that agreements on file with the Board (and not referred to by the applicant) did not indicate a uniform pattern. In the Andre case, the Board pointed out that part of the area sought appeared to fall within the jurisdiction of another local.

It should be pointed out that Practice Note #6 contains specific directions as to what should be filed with an application for certification in the construction industry.

Finally, the fact that an applicant is able to show that it has collective agreements covering the area it seeks and that it has jurisdiction over the area will not automatically result in a grant of that area. Thus in Abel Construction Co. Ltd., O.L.R.B. Monthly Report, May, 1963, p. 66, the applicant sought certification for an area covering 5 counties along the Ottawa River. Its jurisdiction over the area was established and collective agreements covering the area were filed with the Board. In a previous case, the Board in rejecting a similar proposed area noted that it would have regard not only to the pattern of collective bargaining established by a particular union, but also patterns established by other agreements in the area. In the area under consideration in the Abel case, the Board stated that jurisdictions of locals of other unions varied widely as did the pattern of collective bargaining. In the result, the Board granted its usual "at and out of Ottawa" unit.

(f) Cases where no pattern of collective bargaining exists.

Where there is no evidence of pattern and no evidence of the union's jurisdiction, the Board has had some difficulty in setting an appropriate area. It is safe to say that at the present time the Board has evolved no general principles to deal with this problem, other than, perhaps an attempt, conscious or otherwise, to come up with a rough and ready compromise on the conflicting claims of the parties.

While in its earlier decisions there was a tendency to confine the unit in some cases to a single municipality or township, (see for example Welcon Limited, supra, "at Perth" and M. Sule Construction Ltd., supra, Township of Nottawasaga), more recently the tendency has been to grant groupings of townships. Thus in Foundation Co. of Canada Limited, O.L.R.B. Monthly Report, March, 1963, p. 532, the Board granted Sault Ste. Marie and a number of surrounding townships. In Tru-Line Construction Ltd., O.L.R.B. Monthly Report, March, 1963, p. 503, the area granted was the Township of Mountjoy and the Townships immediately adjacent thereto. In M. Sullivan & Son Limited, O.L.R.B. Monthly Report, May, 1963, p. 69, the Board granted 9 townships in the County of Renfrew. In Pigott Construction Co. Ltd., O.L.R.B. Monthly Report, April, 1963, p. 13, the Teamsters were certified for truck drivers in the Townships of Whitby and East Whitby in the County of Ontario. Finally, while in Fraser-Brace Engineering Co. Ltd., O.L.R.B. Monthly Report, March, 1963, p. 509, the Hod Carriers were certified for the Township of Augusta in Grenville, and in T. A. Andre & Sons Limited (supra) Elizabethtown, in Dick Vandenbelt, supra, the Carpenters were certified for the Townships of Elizabethtown and Augusta.

(g) Conclusions

It is clear that the present policies of the Board in dealing with area problems must not be regarded as final and conclusive. From the outset the Board took the position that it was going to proceed slowly. It was hoped that Labour and management would be able to come up with some mutually acceptable solution. Up to the present time, this has not been the case. There seems little doubt that in the months to come the Board will be called on to reconsider some of its present policies.

3. "AT THE SITE THEREOF"

The Goldenberg Report does not define construction industry. When the government decided to implement certain of its recommendations, it became necessary to provide a definition. This is found in section 1(1) (da) of The Labour Relations Act which provides:

"construction industry" means the businesses that are engaged in constructing, altering, decorating, repairing or demolishing buildings, structures, roads, sewers, water or gas mains, pipe lines, tunnels, bridges, canals or other works at the site thereof.

This definition will undoubtedly pose some difficult questions for the Division, particularly in view of the phrase "at the site thereof".

Suppose, for example, a manufacturer of prefabricated units in construction has employees who both fabricate and erect. Is such manufacturer operating a business that is engaged in constructing, etc., a building, etc., "at the site thereof"? The same question may be asked with respect to plumbing, sheet metal, electrical and other contractors whose employees work both in the shop and at the job site. Questions may also arise with respect to material suppliers. The problem may become more complex in conciliation cases where the collective agreement relied on covers employees engaged at the site and others not so engaged.

So far, there have been very few cases where the "on site" problem has arisen. The first case involved the Teamsters and a Ready-Mix Company (Peninsula Ready-Mix & Supplies Ltd., O.L.R.B. Monthly Report, December, 1962, p. 331). The Board found it unnecessary to come to a decision because the union was clearly entitled to certification for the unit claimed and the Board, not having proper argument from either party (the company did not appear), preferred not to make such an important ruling in the circumstances. The Board made the same finding in Transit Mix Concrete Ltd., O.L.R.B. Monthly Report, December, 1962, p. 334.

However, the Teamsters have been certified in two cases under the construction industry procedures. Both involved drivers engaged by a general contractor on "on site" work. In C-A Pitts General Contractor, O.L.R.B. Monthly Report, January, 1963, p. 395, the unit granted was all employees engaged as drivers of Dump, Service or Euclid Trucks, and drivers of D.W. 20 and D.W. 21 Dump and Rear End Ejectors when used on a power unit for equipment which is not self-loading (at or out of Boston Township).

In Pigott Construction Company Limited, O.L.R.B. Monthly Report, April, 1963, p. 13, the unit consisted of all truck drivers in Oshawa and in the townships of Whitby and East Whitby.

Three other cases involved the Sheet Metal Workers. In one (Van Dusen Bros. Ltd., O.L.R.B. Monthly Report, January, 1963, p. 394) the Board found the appropriate unit in the special circumstances of that case to be the on-site workers only and so did not have to rule with respect to the fabricators, etc. In the other two (Acme Plumbing and Heating, O.L.R.B. Monthly Report, January, 1963, p. 394, and Quinte Plumbing and Heating, O.L.R.B. Monthly Report, January, 1963, p. 393) the Board refused to find that the respondents operated a business in the construction industry. At the hearing, the applicant was unable to offer definitive evidence with respect to the nature of the businesses or the work engaged in by the employees, and the respondents were not present.

In one other case (Fix Fast Ltd., O.L.R.B. Monthly Report, March, 1963, p. 505), the Hod Carriers asked for construction labourers working in the respondent's yard. If the bargaining unit had been so described, a question might have arisen as to whether a yard is "at the site thereof". However, the Board granted its regular unit of construction labourers in a given area without reference to the yard and so was not faced with the problem. The matter came up again in Cecchetto & Son Ltd., O.L.R.B. Monthly Report, July, 1963, p. 185. There, the Engineers applied for mechanics and mechanic's helpers at the respondent's yard in Sudbury. The applicant had bargaining rights for the respondent's operators. Neither party requested a hearing and on the evidence before it the Board found it was not able to determine whether the application fell within section 92 of the Act. Accordingly, the Board dealt with the case under the regular certification sections.

MISCELLANEOUS DECISIONS OF THE DIVISION:

Apart from the many cases relating to the construction industry, the Division is at times called on to deal with problems of more general interest. A brief summary of these cases follows:

McLean-Peister Limited, O.L.R.B. Monthly Report, November, 1962, p. 290. C.C.H. Vol. I, par. 16,272.

A majority of the Division held that a company engaged in the business of landscape gardening and nurseryman, was, on the facts before them, engaged in horticulture, and the Board was therefore without jurisdiction to deal with the case. In so finding the

majority said: "We are unable to agree that the fact that the major portion of the respondent's operation is now in commercial, industrial and institutional landscaping as opposed to residential work or nursery work, can alter the fact that the respondent is engaged in cultivation or tilling and preparing a piece of ground appropriated to the cultivation of herbs (which includes grass), flowers and plants. Nor can we accept the argument that because the work (or part of it) may fall within the definition of "construction industry" as defined in section 1(1) (da) of The Labour Relations Act, this takes it out of horticulture. It appears to us that some work on construction sites may very well be horticultural by nature. But what is important is what is being done, not where it is done."

In his dissent, Board member Harvey found that the respondent was primarily engaged in rendering a commercial service which is an integral part of over-all planning and design of industrial and institutional construction. While the Act excludes agriculture and horticulture, it does not, in his opinion, exclude the commercial transportation, storage, handling, sale or use of the product.

Inter-Provincial Paving Company Limited, O.L.R.B. Monthly Report, December, 1962, p. 375, C.C.H. Vol 1, para 16,286.

In this case the respondent, a Quebec company with head office and a yard, etc., in Hull, but with an office also in Ottawa, divided its work between Hull and Ottawa. Some of its employees were residents of Ontario, others of Quebec. The men were hired in Hull and worked out of Hull. At times they worked in Hull and at other times in Ottawa. The application was with respect to a job in Ottawa.

The Board held that the respondent's operations were not local works or undertakings extending beyond the limits of the province within the meaning of section 91(29) and 92(10) (a) of The British North America Act and accordingly the Board was not on that ground debarred from dealing with the application.

The Board held, further, that there was nothing in the Eastern Bakeries Ltd. Case, [1961] 26. D.L.R. (2nd) 332, which made it incumbent on the Board to find it was without jurisdiction. (The Eastern Bakeries Case) dealt with the question whether a Board had the right to include in a unit of resident employees working in the Province, non-resident employees who worked outside the Province.)

Thomas Fuller Construction Company (1958) Limited, O.L.R.B.
Monthly Report, May, 1963, p. 108.

In this case which involved an application to displace an incumbent union, the intervener filed a petition in opposition to the application. The applicant charged that the conduct of the respondent and incumbent with respect to the petition and other matters was such that the Board should apply section 7(5) and certify outright.

The Board said: "The Board realizes that under the legislation an incumbent trade union and an employer have certain advantages not open to a trade union seeking to displace the incumbent. The Board is also not unaware of the fact that an incumbent trade union and/or the employer may, under the guise of exercising rights under the legislation, adopt a course of action which goes beyond that permitted by the statute. This Board does not and will not condone such conduct and, in a proper case, may conclude that a representation vote between an applicant and incumbent trade union would not reveal the true wishes of the employees. However, we stress the words 'proper case'. In our view, the evidence must be strong and clear cut and leave no doubt in the minds of the Board both as to the nature and extent of the conduct involved and as to its effect, namely, that the true wishes of the employees would not likely be disclosed by a representation vote."

In the result, the Board directed a representation vote but added a rider warning the respondent and incumbent that their future actions would be subjected to a searching scrutiny.

The applicant won the vote and the incumbent objected to the result because of the warning contained in the first endorsement, which warning also appeared on the notice of taking of vote. The Board overruled the objections and in so doing reiterated the fact that where an applicant seeks to apply section 7(5) in the circumstances of a case of this nature, there is a very high standard or degree of proof on the union.

Alcan Colony Construction Company, O.L.R.B. Monthly Report,
June, 1963, p. 172.

Following issuance of a certificate and subsequent complaint by solicitors representing another company that the respondent had been incorrectly named, the applicant asked for leave to amend the name of the respondent.

The Board refused to grant leave on the ground that there is an onus on the applicant under section 78 to satisfy the Board that the mistake was a bona fide one and on the evidence before it, the Board was unable to say whether the mistake was bona fide.

Alvin Tile Company Limited, O.L.R.B. Monthly Report, June, 1963, p. 132.

In this case the Bricklayers applied to displace the Rubber workers. The Rubber workers had an all employee unit and a representation vote was directed in a voting constituency consisting of all employees. The Board granted the Bricklayers a craft unit after they had succeeded in winning the vote. The craft unit in fact embraced all present employees of the company.

Lee Turzillo Contracting Company, O.L.R.B. Monthly Report, May, 1963, p. 70.

The carpenters sought a carpenter's unit. The respondent submitted that the carpenter's unit should not include the diver and the diver's tender. The applicant had the diver and diver's tender signed up. In these circumstances, the Board declined to issue two certificates. Instead it certified for carpenters and carpenter's apprentices and included a note that the diver and diver's tender were included in the bargaining unit.

Alcan-Colony Limited, O.L.R.B. Monthly Report, June, 1963, p.159.

In this case the Board, inter alia, held that it was not the policy of the Board to request representatives of an applicant trade union to make themselves available for examination by another party with respect to the documentary evidence of membership filed in support of the application. The Board noted that this followed from the fact that persons immediately concerned with the organizational campaign were not required to be present to give oral testimony respecting the documentary evidence.

The Board also reviewed its procedures in connection with misrepresentation, forgery and non-pay. It pointed out that in the case of misrepresentation, the onus is on the party so alleging to prove its case in the ordinary manner, but that in cases involving forgery or non-pay a different procedure was followed.

The Division has had a number of cases dealing with proof of membership which are of general application. Thus in Starnino and Cesaroni Ltd., O.L.R.B. Monthly Report, December, 1962, p. 345, an application was dismissed because of a failure to file Form 60 (the counterpart to Form 9). In this case a hearing was held and Form 60 was not filed at the hearing. In Fix Fast Limited, O.L.R.B. Monthly Report, March, 1963, p. 518, the applicant was also dismissed for failure to file Form 60. In this case no hearing was requested by either party and the Board saw no reason to put the matter on for hearing and consequently the dismissal took place on the day after the terminal date. (In construction industry cases Form 60 must be filed by the terminal date and not two days after as in ordinary certification cases)

The Board has also dismissed two applications by reason of unsigned evidence of membership. In Eastern Ontario Tile and Terrazzo Company Limited, O.L.R.B. Monthly Report, March, 1963, p. 516, the applicant filed one dues book and 3 receipts. While the dues book constituted satisfactory evidence of membership, the Board held that the receipts by themselves even though countersigned, did not meet the Board's standards, there being no application cards and no other evidence of membership with respect to the persons for whom the receipts were filed. In Page Manufacturing Company Limited, O.L.R.B. Monthly Report, March, 1963, p. 517, the documentary evidence consisted of three unsigned dues books. The application was accordingly dismissed.

In Ben Bruinsma and Sons Limited, O.L.R.B. Monthly Report, July, 1963, p. 197, the Board set out its policy with respect to cards and receipts less than six months old and more than six months old. The application was dismissed because the vast majority of the cards and receipts were more than a year old.

Finally, in Omer Chaput, O.L.R.B. Monthly Report, April, 1963, p. 25, the application was dismissed because there was no evidence of financial sacrifice on their own behalf by the applicants for membership. The facts were that the initiation fees were paid by the employer and the money was not intended as a loan to be repaid by the employees.

5. CONSTRUCTION INDUSTRY PROCEDURES:

The object of the new construction industry sections is to effect a speed-up in the handling and disposition of cases in the construction industry, and Rules 64 to 77 inclusive were drawn up with this object in mind. It is not intended to review the rules but rather to comment on some of the procedures which have been adopted by the panel in the light of the new sections and the rules. It should be noted that

pre-hearing vote applications in the construction industry are dealt with in the same manner as pre-hearing votes outside the construction industry. In other words, the regular forms and the regular rules apply. (See section 67 of the Rules) The Board has had only one case of a pre-hearing vote in the construction industry, namely, Sirotek Construction Limited, O.L.R.B. Monthly Report, May, 1963, p. 80.

(a) Processing the Application:

On receipt of an application the Registrar fixes an abridged terminal date pursuant to Rule 66 (compare Rule 2). Although a hearing may not ultimately be held, a potential hearing date, two weeks from the date of receipt of the application, is also fixed. If an application is received on a Friday, the date is two weeks from the previous Thursday, unless the application is from an area where in the opinion of the Registrar more time is necessary to permit processing the application. In such event the potential hearing will be two weeks from the following Monday.

If a duly completed application is received by approximately 3:00 p.m., notices of the application will be sent out the same day to all interested parties by registered, special delivery mail. Control sheets are prepared to insure that administrative delays do not occur as processing continues.

(b) Posting:

A supervisor makes a telephone check with the employer the day following the mailing of the notice of application to the employer to ascertain whether the documents have been received and whether Form 57, Notice to Employees, has been posted at the job site or sites. Where any difficulty arises, the practice is to utilize the authority contained in Section 77 (2) (e) of the Act, and a representative of the Board is sent out to make such services as may be necessary and/or to post the required notices. This new procedure has been a great time saver because either the employer complies with the request of the supervisor or if he refuses or there is doubt as to whether he will comply forthwith or the supervisor is unable to contact him, the Board has, in most instances, been able to get an examiner out to make the necessary services and/or to effect posting before the terminal date.

(c) Lists of Employees and Specimen Signatures

In all types of representation cases, whether construction or otherwise, employers are directed to file with the Board by the terminal date lists of employees and specimen signatures. In a representation case outside the construction industry, lists etc. will be accepted by the Board up to the date of the hearing, and, indeed, in many cases, the employer is given an opportunity to file the required lists within a prescribed time after the hearing.

This practice has been discontinued in construction industry cases. If no hearing is directed, the case will normally be dealt with by the Board the day after the terminal date even though the required lists have not been filed. If a hearing is held, lists will be accepted up to the date of the hearing but not after that date.

The Registrar no longer automatically sends a telegram to an employer who has failed to file a list or specimen signatures. If there is no hearing, the Board disposes of the case immediately after the terminal date. If the Board directs a hearing, the Board may instruct the Registrar to notify the respondent that the list and specimen signatures must be filed on or before the day of the hearing. In other words, telegrams requesting lists, etc., are only sent on the instruction of the Board.

(a) Interventions:

When an application for certification is filed, the registrar, as soon as he ascertains that there may be a trade union having a potential interest, notifies the trade union by telephone and/or telegram that an application has been made. The telegram sets out the name of the respondent, the job site, the name of the applicant and the proposed bargaining unit but not the proposed exclusions. In addition to the above, the potential intervener is served with Form 62.

Where the Registrar is notified of an intended intervention by telegram (section 72 of the Rules) or Forms 63 and 64 are filed, other parties to the proceedings are notified immediately. Once again an attempt is made to notify the parties by telephone, and,

if the attempt is successful, confirmation is made by letter. If unsuccessful, the parties are notified by telegram. In addition to the above, there is the usual service by registered special delivery mail of copies of Forms 63 or 64 on the other parties.

(e) Hearings:

Section 75(9a) of the Act provides that a hearing need not be held in a certification case in the construction industry. For this reason, the forms sent to the various parties no longer contain the usual notice of hearing but, rather, a reference to a potential hearing date. Whether a hearing will be held is usually not known until after the terminal date. However, if a hearing is to be held, the date has been selected in advance and the parties put on notice. Once it is determined that a hearing is to be held, all parties including the applicant must be served with a Notice of Hearing in Form 58.

This form is different from the usual notice form in that the purpose of the hearing must be set out. Thus for example, the only purpose of the hearing may be to determine whether the matter is one coming within the construction industry or it may be for the sole purpose of inquiring into a petition.

As a matter of actual practice where a hearing is held the Board has usually conducted the hearing along the same lines as an ordinary certification case. In other words, even though the main purpose of the hearing is to determine an appropriate geographic area, the Board will usually announce the count and deal with any other issues that may arise.

While the Board is not required to hold a hearing, in most cases, where a party requests a hearing, the Board has granted that request. However, in cases where the Board feels that no useful purpose would be served in granting a hearing, the request is denied.

Thus in Trio Carpenters (Contractors), O.L.R.B. Monthly Report, December, 1962, p. 333, the respondent requested a hearing on 2 grounds: (1) that the respondent was bound to pay its carpenters a minimum wage and did not feel an increase was possible, (2) that the respondent did not contemplate further projects in the area sought by the applicant. The applicant had filed a number of collective agreements in support of the area it was seeking and respondent's solicitor

inspected these agreements and was invited to make any further representations he cared to make in connection with the request for a hearing. No further representations were made.

The Board denied the request for a hearing stating that the first ground was not a matter relevant to the issues before the Board. The Board went on to say that in not having received further representations it felt that it was in a position to deal with the area problem without a hearing.

In The Foundation Company of Canada Limited, O.L.R.B. Monthly Report, March, 1963, p. 503, the respondent sought a hearing on the ground that (1) it was incumbent on the applicant to prove that they had 50% representation and (2) in connection with the respondent's contention that the area sought by the applicant should be restricted.

As to the first ground, the Board pointed out that the respondent had not made any allegations of impropriety with respect to the evidence of membership and no statement of desire to make objections had been filed by employees. The Board also said that if a hearing was held, all that would take place with respect to membership would be "the count". Where no hearing takes place, this information is given in the endorsement. The Board further pointed out that if a party felt there was an error, it had the right to ask the Board to re-consider its decision. In so far as the second ground for hearing was concerned, the Board said that since its finding in the case did not differ materially from the position taken by the respondent, there therefore did not appear to be any reason for holding a hearing on this ground.

In Alcan-Colony Limited, O.L.R.B. Monthly Report, June, 1963, p. 159, the respondent requested a hearing because it was not certain of those members in the unit who had consented to the application and further was of the opinion that the required documents had not been properly executed. The respondent requested an opportunity of examining "the representatives of the bargaining unit".

The Board, through the Registrar, pointed out to the respondent it was not the policy of the Board to release the names of persons who are members of a trade union except in exceptional circumstances, nor was it the policy to permit an examination of representatives of the bargaining unit in the first instance. The respondent was also told that a person alleging improper conduct or impropriety was required to particularize its charges and establish a prima facie case. The respondent was invited to submit such further representations as it saw fit.

No further representations having been received, the Board denied the request for a hearing. In so doing, it reviewed in some detail the hearing procedures in the construction industry including a reference to section 75 of the Board's Rules of Procedure. The Board also reviewed its policies with respect to what is revealed about union membership at a hearing and what is revealed in an endorsement in a construction industry case. Further, the Board reviewed in brief its procedural practices respecting cases involving misrepresentation, forgery and non-pay.

Finally, in Lightfoot Construction Limited Case, O.L.R.B. Monthly Report, July, 1963, p. 191, the respondent in its Reply stated firstly that it did not want a hearing and secondly that it requested a hearing on the ground that while it did not oppose unions and the men were free to join any union, the respondent did not feel that its employees thoroughly understood the situation.

In denying the request, the Board pointed out that section 75 of the Rules had not been complied with and, furthermore, that employees had not submitted any statement of desire to make objections and representations.

Wherever employees have filed statements of objection, the Board has always put the matter on for hearing. However, if the count showed that the petition was not relevant, i.e. that there was insufficient over-lap between the membership evidence and the petition to reduce the applicant to less than an outright certification position, then the Board would have to consider whether it would be advisable to put the matter on for hearing.

(f) Examiners:

An examiner may be appointed before a hearing is held or even though a hearing may not be held. Where an examiner is required, a high priority is given his appointment. The parties are usually notified by telegram of the appointment of an examiner followed, of course, by the regular method of notification by letter. The examiner is instructed to meet with the parties with the least possible delay. As a result, the examiner will often be in touch with the parties on the day of his appointment and will attempt to arrange a meeting for the next day or the day after.

In regular certification cases (apart from pre-hearing vote cases) an examiner is not appointed until after a hearing has been held. In construction industry cases, an attempt is made to identify problems requiring the appointment of an examiner as soon as they arise, with the result that an examiner has usually met with the parties before the potential hearing date and sometimes by the terminal date.

Thus, for example, on a number of occasions it has become apparent once the respondent has filed its list and specimen signatures that there is going to be a disagreement as to the number of employees in the bargaining unit. This may come about following the check by the clerk of the Board on the count or, as in a recent case, from the form of Reply itself, e.g., the respondent takes the position that it has no employees in the bargaining unit. Where this situation happens, the normal practice is to inform the applicant by telephone, if possible, of the contents of the Reply or the number of persons the respondent claims to be in the bargaining unit or that the applicant has lost a number of cards. The applicant, after an investigation, usually requests that an examiner be appointed. The Board sends out an examiner to make the necessary inquiries. In some cases, the inquiries have resulted in withdrawals of the application. In other cases, the examiner has set up a vote after concluding his examination and in still others the matter may be put on for hearing. In some cases, the examiner has reported to the Board in the usual manner and there being no objections to the report, the Board proceeds to dispose of the case without a hearing. Where the parties agree to the waiving of a formal examiner's report, the Board is able to deal with the matter as soon as the examiner reports to it. Whatever procedure is followed, there has resulted in every case a considerable saving in time in the ultimate disposition of the case.

(g) Votes:

There are no special rules covering representation votes in the construction industry. However, a close watch is kept on each file to ensure that delays do not occur. The parties are urged to meet immediately in order to settle the voting details, and returning officers are instructed to deal with the matter expeditiously. If at all possible, the first date selected by the parties is chosen by the Registrar for the vote.

(h) Examiners' and Vote Reports:

The regular rules apply to objections to vote and examiners' reports. It has been the practice of the Board where possible to abridge the time required by the rules for filing objections to these reports.

(i) Time Lapse:

The research division is currently engaged in a study on time-lapse respecting certification cases in the construction industry. When this study is completed, it is anticipated that the findings will be published in a future issue of the Board's monthly reports.

MONTHLY REPORT



MARCH 1964

ONTARIO LABOUR RELATIONS BOARD

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DURING MARCH 1964

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No VOTE CONDUCTED

7450-61-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. LEIGH METAL PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (46 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 679)

7705-63-R: UNITED STEELWORKERS OF AMERICA, (APPLICANT). V. NATWELD STEEL PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (52 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"WE ARE UNABLE TO FIND ON THE EVIDENCE BEFORE US THAT THE PETITION REFLECTS THE TRUE AND VOLUNTARY WISHES OF ALL THE PERSONS WHO SUBSCRIBED THEIR NAMES TO IT. IN THESE CIRCUMSTANCES WE CANNOT ACCEPT THE PETITION AS CASTING DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE UNION. IN THE RESULT IT IS UNNECESSARY FOR US TO EXPRESS ANY OPINION AS TO WHAT WEIGHT WE WOULD HAVE GIVEN TO THE COUNTER PETITION."

BOARD MEMBER H.F. IRWIN, WHILE NOT DISSENTING, SAID:

"I WISH TO RECORD THE FACT THAT IF IT HAD BEEN NECESSARY TO CONSIDER THE COUNTER PETITION, SIGNED BY EMPLOYEES OF THE RESPONDENT AND FILED WITH THE BOARD BY THE APPLICANT UNION, I WOULD HAVE GIVEN IT NO WEIGHT. THE EVIDENCE ADDUCED AT THE HEARING PERTAINING TO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE COUNTER PETITION WAS SUCH THAT I DO NOT BELIEVE THAT IT REPRESENTED THE TRUE AND VOLUNTARY WISHES OF THE EMPLOYEES WHO SIGNED IT."

7754-63-R: LOCAL 2537 - LUMBER & SAWMILL WORKERS' UNION - U.B. OF C. & J. OF A. (APPLICANT) v. BAY LUMBER LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN ITS SAWMILL OPERATIONS IN THE TOWNSHIP OF MACMURCHY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, CLERKS, SCALERS AND OFFICE STAFF." (22 EMPLOYEES IN THE UNIT).

7766-63-R: LOCAL UNION 804, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) v. MAGNETIC COIL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WATERLOO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (16 EMPLOYEES IN THE UNIT).

7768-63-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. VERTRAM SALAMON (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT PEMBROKE SAVE, AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (24 EMPLOYEES IN THE UNIT).

7777-63-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL - CIO - CLC (APPLICANT) v. NATIONAL RUBBER COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (241 EMPLOYEES IN THE UNIT).

7779-63-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL UNION 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. OSHAWA LAUNDRY & DRY CLEANING CO. LTD. (RESPONDENT).

UNIT: "ALL DELIVERY AND PICK-UP DRIVERS OF THE RESPONDENT AT OSHAWA, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (6 EMPLOYEES IN THE UNIT).

7780-63-R: HAWKESBURY HOSPITAL EMPLOYEES UNION (CNTU) (APPLICANT) v. ST-COEUR-DE MARIE HOSPITAL (RESPONDENT).

UNIT: "ALL LAY EMPLOYEES OF THE RESPONDENT AT ITS HOSPITAL IN HAWKESBURY, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF,

UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, CHIEF ENGINEER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (33 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADILOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS."

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE BARGAINING UNIT INCLUDES CERTIFIED NURSING ASSISTANTS."

7787-63-R: OFFICE EMPLOYEES INTERNATIONAL UNION AFL-CIO (APPLICANT) V. CANADIAN WESTINGHOUSE EMPLOYEES¹ (HAMILTON WORKS) CREDIT UNION LIMITED (RESPONDENT)

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT COMMITTEE EXPEDITOR (LOAN MANAGER) OFFICE MANAGER, BOARD CO-ORDINATOR (ASSISTANT OFFICE MANAGER), PERSONS ABOVE THE RANKS OF COMMITTEE EXPEDITOR (LOAN MANAGER), OFFICE MANAGER, BOARD CO-ORDINATOR (ASSISTANT OFFICE MANAGER), AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (8 EMPLOYEES IN UNIT)

(AGREEMENT OF THE PARTIES).

7788-63-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION AFL-CIO, CLC AND ITS LOCAL #28 (TORONTO) (APPLICANT) V. STILL-MAN MANUFACTURING (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SCARBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (26 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

7799-63-R: HOTEL & RESTAURANT WORKERS INTERNATIONAL UNION, LOCAL 197, (APPLICANT) V. THE WAR AMPUTATIONS OF CANADA, HAMILTON DISTRICT BRANCH (RESPONDENT).

UNIT: "ALL TAPMEN AND BEVERAGE ROOM WAITERS EMPLOYED BY THE RESPONDENT AT HAMILTON." (2 EMPLOYEES IN THE UNIT).

7800-63-R: HOTEL & RESTAURANT WORKERS INTERNATIONAL UNION, LOCAL 197, (APPLICANT) V. GRAND PUBLIC HOUSE (RESPONDENT).

UNIT: "ALL TAPMEN AND BEVERAGE ROOM WAITERS EMPLOYED BY THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT MANAGERS AND PERSONS ABOVE THE RANK OF MANAGER." (5 EMPLOYEES IN THE UNIT.)

7814-63-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. HAYDEN LUMBER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAYDEN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (12 EMPLOYEES IN THE UNIT.)

7820-63-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (CARPENTER SECTION) SUDBURY BUILDING CONSTRUCTION TRADE COUNCIL (APPLICANT) v. HILL-CLARK-FRANCIS, LIMITED (RESPONDENT) v. INTERNATIONAL WOODWORKERS OF AMERICA (INTERVENER).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF TECK AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO IN THE DISTRICT OF TIMISKAMING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT). (IN ALL THE CIRCUMSTANCES OF THIS CASE).

7821-63-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) v. BARAN ASSOCIATES LIMITED (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT ITS ST. CLAIR HOTEL IN SARNIA, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (10 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES)

7822-63-R: RETAIL, WHOLESALE & DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) v. LUKAS HOTEL COMPANY LTD. (RESPONDENT).

UNIT 1: "ALL EMPLOYEES OF THE RESPONDENT AT ITS MORDEN HOUSE HOTEL IN SARNIA, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT.)

(AGREEMENT OF THE PARTIES)

UNIT 2: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AT ITS MORDEN HOUSE HOTEL IN SARNIA, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND OFFICE STAFF." (3 EMPLOYEES IN THE UNIT)

(AGREEMENT OF THE PARTIES)

7825-63-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. STEWART EQUIPMENT COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF WELLAND ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE NATURE OF THE RESPONDENT'S BUSINESS, THAT IS, RENTAL EQUIPMENT)

7830-63-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL: CIO:CLC (APPLICANT) v. NATIONAL GROCERS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TIMMINS, SAVE AND EXCEPT OFFICE MANAGER-ACCOUNTANT, PERSONS ABOVE THE RANK OF MANAGER-ACCOUNT & TERRITORIAL SALES MEN." (6 EMPLOYEES IN THE UNIT).

7832-63-R: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 141, WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. STRADWICK INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 379 Highbury Avenue, London, save and except foremen, persons above the rank of foreman, office and sales staff and persons regularly employed for not more than 24 hours per week." (17 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"HAVING REGARD TO ALL THE EVIDENCE BEFORE US, THE BOARD FURTHER FINDS THAT DISTRICT 50, UNITED MINE WORKERS OF AMERICA HAS ABANDONED THE BARGAINING RIGHTS WHICH IT ACQUIRED UNDER THE BOARD'S CERTIFICATE OF AUGUST 19TH, 1958 AND THE BOARD DECLARES THAT DISTRICT 50, UNITED MINE WORKERS OF AMERICA NO LONGER REPRESENTS THE EMPLOYEES OF STRADWICK INDUSTRIES LIMITED AT LONDON FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT."

7843-63-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, (APPLICANT) v. RANEY BRADY McCLOY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

7853-63-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, (APPLICANT) v. J. CAMISA (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

7855-63-R: THE OSHAWA TYPOGRAPHICAL UNION (ITU) LOCAL 969 (APPLICANT) v. ALGER PRESS LIMITED (RESPONDENT) v. AMALGAMATED LITHOGRAPHERS OF AMERICA, LOCAL 12 (RESPONDENT).

UNIT: "ALL PROOF READERS OF THE RESPONDENT AT OSHAWA." (2 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT EMPLOYEES OF THE RESPONDENT WHO ARE BOUND BY SUBSISTING COLLECTIVE AGREEMENTS TO WHICH THE RESPONDENT IS A PARTY ARE NOT INCLUDED IN THE BARGAINING UNIT DEFINED ABOVE."

7857-63-R: RCA VICTOR SALARIED EMPLOYEES' ASSOCIATION (APPLICANT) v. RCA VICTOR COMPANY LTD. (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ITS DISTRIBUTION AND SERVICE WAREHOUSE IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, ADMINISTRATORS, BRANCH CLERKS, PERSONS ABOVE THE RANK OF SUPERVISOR, ADMINISTRATOR AND BRANCH CLERK, SALESMEN, THE SECRETARY TO THE BRANCH MANAGER, ONE STENOGRAPHER TO THE CREDIT MANAGER, ONE STENOGRAPHER TO THE TORONTO MANAGER OF BROADCAST AND INDUSTRIAL PRODUCTS MARKETING, ONE PERSON TO DO STENOGRAPHIC WORK FOR THE TECHNICAL PRODUCTS SERVICE MANAGER, AND EMPLOYEES BOUND BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (26 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE STENOGRAPHER TO THE MANAGER OF OPERATIONS AND MANAGERS OF SALES, THE STENOGRAPHER TO THE CREDIT MANAGER, THE STENOGRAPHER TO THE TORONTO MANAGER OF BROADCAST AND INDUSTRIAL PRODUCTS MARKETING, THE PERSON TO DO STENOGRAPHIC WORK FOR THE SERVICE MANAGER AND THE PERSON TO DO STENOGRAPHIC WORK FOR THE TECHNICAL PRODUCTS MANAGER ARE PERSONS WHO ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND IT IS THE INTENTION OF THE BOARD, IN EXCLUDING SUCH CLASSIFICATIONS FROM THE BARGAINING UNIT DEFINED ABOVE, THAT THE PERSONS IN THESE CLASSIFICATIONS ARE EXCLUDED FROM THE BARGAINING UNIT ONLY SO LONG AS THEY ARE EMPLOYED IN SUCH CAPACITY."

7862-62-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 802 (APPLICANT) v. HARROW-FARMERS CO-OPERATIVE ASSOCIATION LIMITED (RESPONDENT).

UNIT 1: "ALL EMPLOYEES OF THE RESPONDENT AT HARROW, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (9 EMPLOYEES IN THE UNIT.)

UNIT 2: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT HARROW, SAVE AND EXCEPT THE ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT).

7866-63-R: DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) v. MAPLE LEAF BUILDING SUPPLIES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND OFFICE STAFF." (8 EMPLOYEES IN THE UNIT).

7916-63-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION, LOCAL 1981 (APPLICANT) v. LAVERN ASMUSSEN LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF PUSLINCH, NICHOL, PILKINGTON, GUELPH AND ERAMOSA IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"AS AN INTERIM MEASURE THE BOARD HAS SET AN AREA CONSISTING OF THE TOWNSHIPS OF PUSLINCH, NICHOL, PILKINGTON, GUELPH AND ERAMOSA IN THE COUNTY OF WELLINGTON. THE BOARD IS NOT PREPARED TO DEPART FROM THIS AREA IN THE PRESENT CASE."

7918-63-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) v. PNEUCCO MACHINERY COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (15 EMPLOYEES IN UNIT)

7921-63-R: TEAMSTERS' LOCAL UNION No.230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.C.B. OF T. (APPLICANT) v. PREMIER BUILDING MATERIALS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT LOCATED AT THE SECOND CONCESSION WEST, LOT 18 AND 19, CALEDON TOWNSHIP, COUNTY OF PEEL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (14 EMPLOYEES IN THE UNIT).

7928-63-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W) (APPLICANT) v. TECUMSEH METAL CRAFT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF SANDWICH EAST, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (17 EMPLOYEES IN THE UNIT).

7931-63-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 765 (APPLICANT) v. FRASER-BRACE ENGINEERING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE CITY OF KINGSTON AND WITHIN A TWENTY-FIVE MILE RADIUS FROM THE CITY LIMITS OF THE SAID CITY OF KINGSTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"IN CONSIDERING THE APPROPRIATE AREA IN THE PRESENT CASE, THE BOARD HAS HAD OCCASION TO EXAMINE A NUMBER OF COLLECTIVE AGREEMENTS FILED WITH THE BOARD PURSUANT TO SECTION 61 OF THE LABOUR

RELATIONS ACT. THE EXAMINATION REVEALS THAT THERE IS NO CONSISTENT PATTERN FOR THE KINGSTON AREA. THUS, THE AGREEMENTS ON FILE SHOW THAT THE KINGSTON BUILDERS' EXCHANGE HAS COLLECTIVE AGREEMENTS WITH FOUR DIFFERENT UNIONS AND IN EACH CASE THE AREA COVERED BY THE AGREEMENT DIFFERS. AGREEMENTS ON FILE BETWEEN OTHER UNIONS AND INDIVIDUAL COMPANIES TELL THE SAME STORY. IN THESE CIRCUMSTANCES AND FOR THE PURPOSES OF THIS CASE ONLY, THE BOARD HAS DECIDED TO RESTRICT THE AREA SOUGHT BY THE APPLICANT. HOWEVER, THE BOARD WISHES TO MAKE IT KNOWN THAT IT INTENDS HOLDING A HEARING IN KINGSTON IN THE NEAR FUTURE IN ORDER TO ENTER-TAIN REPRESENTATIONS FROM ALL INTERESTED TRADE UNIONS AND EMPLOYERS ON THE SUBJECT OF AN APPROPRIATE AREA FOR THE KINGSTON REGION. INTERESTED PERSONS WILL BE INVITED TO APPEAR BEFORE THE BOARD AND MAKE THEIR REPRESENTATIONS."

7933-63-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. MAGIC POPCORN COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (9 EMPLOYEES IN UNIT).

7935-63-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL-CIO:CLC (APPLICANT) V. GRAND UNION HOTEL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

7937-63-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE WHITBY PUBLIC SCHOOL BOARD (RESPONDENT).

UNIT 1: "ALL EMPLOYEES OF THE RESPONDENT IN ITS CARE-TAKING AND MAINTENANCE STAFF, SAVE AND EXCEPT SUPERINTENDENTS, PERSONS ABOVE THE RANK OF SUPERINTENDENT, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (10 EMPLOYEES IN THE UNIT).

7946-63-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. COLE STEEL INTERNATIONAL LTD. DIVISION OF LITTON INDUSTRIES INC. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (119 EMPLOYEES IN THE UNIT).

7955-63-R: PATTERN MAKERS ASSOCIATION OF HAMILTON AND VICINITY AND AFFILIATE OF THE PATTERN MAKERS LEAGUE OF NORTH AMERICA (APPLICANT) V. DUNDAS PATTERN COMPANY (RESPONDENT).

UNIT: "ALL PATTERN MAKERS AND THEIR APPRENTICES IN THE EMPLOY OF THE RESPONDENT AT DUNDAS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

7961-63-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & BRNAMENTAL IRONWORKERS LOCAL 721 (APPLICANT) V. INDUSTRIAL CONCRETE FORMING LTD. (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF PETERBOROUGH, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES)

7964-63-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) v. CAMESCO LIGHTING PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (46 EMPLOYEES IN THE UNIT.)

(AGREEMENT OF THE PARTIES)

7966-63-R: INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABOURERS UNION, LOCAL 527, (A.F.L.-C.I.O.) (C.L.C.) (APPLICANT) v. GILBERT STEEL LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WORKING AT OR OUT OF OTTAWA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

7967-63-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION, LOCAL #493 (APPLICANT) v. E.G.M. CAPE & COMPANY (1956) LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE CITY OF SAULT STE. MARIE AND IN THE TOWNSHIPS OF PRINCE, KORAH AND TARENTOROUS AND IN THE UNORGANIZED TOWNSHIPS OF PARKE AND AWENGE AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

8049-63-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION (APPLICANT) v. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT COBALT, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN UNIT).

8087-63-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) v. THOMAS J. LIPTON, LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS REGULARLY EMPLOYED AS THEIR HELPERS IN THE POWERHOUSE OF THE RESPONDENT AT ITS PLANT IN THE TOWNSHIP OF CHINGACOUSY, SAVE AND EXCEPT THE CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT.)

8105-63-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) v. GILBERT STEEL LIMITED (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF PETERBOROUGH, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

8113-63-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) v. DREW BROWN LIMITED (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN OSHAWA AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT, UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE TOWNSHIPS OF UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

7718-63-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. MEMORIAL HOSPITAL (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOM AT BOWMANVILLE, SAVE AND EXCEPT THE CHIEF ENGINEER." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON	
ELIGIBILITY LIST	6
NUMBER OF BALLOTS CAST	6
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF INTERNATIONAL UNION OF OPERATING ENGINEERS	0

7750-63-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. COLUMBUS MCKINNON LIMITED (RESPONDENT) v. CANADIAN STEEL WORKERS' UNION NO.53, N.C.C.L. (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT ST. CATHARINES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (158 EMPLOYEES IN UNIT).

NUMBER OF PERSONS ON REVISED	
ELIGIBILITY LIST	155
NUMBER OF BALLOTS CAST	155
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF APPLICANT	80
NUMBER OF BALLOTS MARKED AS	
OPPOSED TO APPLICANT	75

7778-63-R: INTERNATIONAL ASSOCIATION OF MACHINISTS (APPLICANT) v. SOLA-BASIC PRODUCTS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (97 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED ELIGIBILITY LIST	96
NUMBER OF BALLOTS CAST	96
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	71
NUMBER OF BALLOTS MARKED IN FAVOUR OF UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) LOCAL 512	25

CERTIFIED SUBSEQUENT TO POST HEARING VOTE

7076-63-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. DISCOUNT FOODS LIMITED (RESPONDENT) V. LOBLAW WORKERS' COUNCIL (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES AT BRANTFORD, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

ON JANUARY 14, 1964 THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT JACK HYSON EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT AND IS NOT INCLUDED IN THE BARGAINING UNIT AND THAT MRS. J. SHINGLER IS EXCLUDED FROM THE BARGAINING UNIT UNDER THE EXCLUDED CLASSIFICATION OF OFFICE STAFF AND THAT MR. McCREARY DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT AND IS INCLUDED IN THE BARGAINING UNIT."

BOARD MEMBER, D.M. STOREY DISSENTED AND SAID:

"I DISSENT. I WOULD HAVE FOUND THAT JACK HYSON DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT AND WOULD THEREFORE HAVE INCLUDED HIM IN THE BARGAINING UNIT."

NUMBER OF NAMES ON REVISED ELIGIBILITY LIST	12
NUMBER OF BALLOTS CAST	12
NUMBER OF BALLOTS SEGREGATED (NOT COUNTED)	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	7
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	4

7555-63-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO-CLC (APPLICANT) v. CHEMICAL LIME LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN THE TOWNSHIPS OF NORTH OXFORD AND WEST OXFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (38 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"HAVING REGARD TO ALL THE EVIDENCE AND REPRESENTATIONS MADE AT THE HEARING, THE BOARD FINDS THAT THE RESPONDENT HAS FAILED TO SATISFY THAT THE ELECTIONEERING ENGAGED IN BY THE APPLICANT PRIOR TO THE TAKING OF THE REPRESENTATION VOTE IN THIS MATTER WAS IN CONTRAVENTION TO THE LABOUR RELATIONS ACT OR IN ANY WAY PREVENTED THE EMPLOYEES OF THE RESPONDENT FROM FULLY EXERCISING THEIR CHOICE WITH RESPECT TO A BARGAINING AGENT.

THE BOARD ACCORDINGLY DISMISSES THE OBJECTIONS FILED BY THE RESPONDENT WITH RESPECT TO THE REPRESENTATION VOTE TAKEN BY THE BOARD IN THIS CASE."

NUMBER OF NAMES ON	
ELIGIBILITY LIST	38
NUMBER OF BALLOTS CAST	38
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF APPLICANT	24
NUMBER OF BALLOTS MARKED AS	
OPPOSED TO APPLICANT	14

7617-63-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) v. WHITBY BOAT WORKS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANTS IN THE TOWNSHIP OF WHITBY SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (23 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED	
ELIGIBILITY LIST	19
NUMBER OF BALLOTS CAST	19
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF APPLICANT	13
NUMBER OF BALLOTS MARKED AS	
OPPOSED TO APPLICANT	6

7627-63-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. BABCOCK-WILCOX AND GOLDIE-MCCULLOCH LIMITED (RESPONDENT) v. CANADIAN STEELWORKERS' UNION, BABCOCK DIVISION, (NCCL) (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANTS IN GALT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (432 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED ELIGIBILITY LIST	405
NUMBER OF BALLOTS CAST	404
NUMBER OF SPOILED BALLOTS	2
NUMBER OF SEGREGATED BALLOTS (NOT COUNTED)	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	211
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	190

APPLICATIONS FOR CERTIFICATION DISMISSED

No Vote Conducted

7637-63-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 869 (APPLICANT)
v. BROCKVILLE CHEMICALS COMPANY LIMITED (RESPONDENT) v. INTERNATIONAL CHEMICAL
WORKERS UNION (INTERVENER). (9 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"THE APPLICANT HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT
FOR ALL STATIONARY ENGINEERS AND HELPERS EMPLOYED BY THE RESPONDENT
AT ITS MAITLAND WORKS.

THE APPLICANT HAD PREVIOUSLY APPLIED ON SEPTEMBER 15TH, 1961
TO BE CERTIFIED FOR ALL STATIONARY ENGINEERS AND OTHERS EMPLOYED IN
THE BOILER ROOM OF THE RESPONDENT, SAVE AND EXCEPT THE CHIEF ENGINEER.

THE BOARD IN ITS DECISION DATED APRIL 10TH, 1962 FOUND THAT
THE STATIONARY ENGINEERS EMPLOYED BY THE RESPONDENT ARE CLASS-
IFIED BY THE RESPONDENT AS STATIONARY ENGINEERS (CHEMICAL OPER-
ATORS) AND WERE NOT EMPLOYED IN A BOILER ROOM AS SUCH BUT WERE
EMPLOYED BY THE RESPONDENT IN ITS NITRIC ACID PLANT AND WERE
ENGAGED IN THE PRODUCTION OF NITRIC ACID WHICH IS AN INTEGRAL
PART OF THE FERTILIZER DIVISION OF THE RESPONDENT.

THE BOARD FOUND THAT WHILE THE EMPLOYEES WITH WHOM WE ARE
HERE CONCERNED WERE HIRED PRIMARILY FOR THE PURPOSE OF MANUFAC-
TURING NITRIC ACID, THE WASTE HEAT IN THE NITRIC ACID PLANT WAS
UTILIZED BY THE RESPONDENT TO PRODUCE STEAM AND THIS BY-PRODUCT
OF THE NITRIC ACID PRODUCTION REQUIRED THAT THE OPERATORS IN THE
NITRIC ACID PLANT HOLD STATIONARY ENGINEERS CERTIFICATES IN ORDER
TO COMPLY WITH THE REQUIREMENTS OF THE RELEVANT PROVINCIAL STATUTES.

THE BOARD FOR THE REASONS GIVEN IN ITS DECISION OF APRIL 10TH,
1962 FOUND THAT A UNIT OF STATIONARY ENGINEERS AND OTHERS EMPLOYED
IN THE BOILER ROOM OF THE RESPONDENT WAS INAPPROPRIATE FOR COL-
LECTIVE BARGAINING. THE BOARD ON APRIL 10TH, 1962, CERTIFIED THE
INTERVENER AS BARGAINING AGENT OF ALL EMPLOYEES OF THE RESPONDENT

INCLUDING THE STATIONARY ENGINEERS (CHEMICAL OPERATORS) WITH WHOM WE ARE HERE CONCERNED, AND THE STATIONARY ENGINEERS HAVE BEEN REPRESENTED BY THE INTERVENER SINCE THAT TIME.

THE APPLICANT IN THE INSTANT APPLICATION HAS ALLEGED THAT THE NATURE AND SCOPE OF THE DUTIES OF THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED HAVE SUBSTANTIALLY CHANGED AND HAS REQUESTED THE BOARD TO FIND THAT AT THE TIME THIS APPLICATION WAS MADE A UNIT OF STATIONARY ENGINEERS AND HELPERS EMPLOYED BY THE RESPONDENT IS APPROPRIATE FOR COLLECTIVE BARGAINING.

WHILE ONE ADDITIONAL STAND-BY BOILER HAS BEEN ADDED TO THE EQUIPMENT IN THE NITRIC ACID PLANT, WE ARE SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE US, THAT THE NATURE AND SCOPE OF THE DUTIES OF THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED HAVE NOT SUBSTANTIALLY OR MATERIALLY CHANGED BETWEEN SEPTEMBER 15TH, 1961, THE DATE OF THE FIRST APPLICATION, AND JANUARY 28TH, 1964 THE DATE OF THE INSTANT APPLICATION. WE FIND THAT THE PRIME REASON THAT THESE EMPLOYEES ARE EMPLOYED BY THE RESPONDENT IS FOR THE PURPOSE OF MANUFACTURING NITRIC ACID AND SIMILAR FUNCTIONS WHICH ARE INVOLVED IN THE MANUFACTURE OF OTHER CHEMICALS BY THE RESPONDENT.

THERE HAS BEEN NO REQUEST BY THE APPLICANT TO CAUSE THE BOARD TO REVIEW ITS DECISION OF APRIL 10TH, 1962 IN THIS MATTER AND ALTHOUGH THE BOARD IS NOT CALLED UPON TO REVIEW OR RECONSIDER THAT DECISION, WE MIGHT ADD THAT THERE IS NO EVIDENCE BEFORE US WHICH WOULD CAUSE THE BOARD TO VARY OR REVOKE ITS FORMER DECISION IN THIS MATTER.

IN VIEW OF OUR FINDING THAT THE NATURE AND SCOPE OF THE DUTIES OF THE EMPLOYEES OF THE RESPONDENT WITH WHOM WE ARE HERE CONCERNED HAVE NOT SUBSTANTIALLY OR MATERIALLY CHANGED, WE FIND FOR THE REASONS GIVEN BY THE BOARD IN ITS DECISION OF APRIL 10TH, 1962 THAT THE UNIT PROPOSED BY THE APPLICANT IS NOT APPROPRIATE FOR COLLECTIVE BARGAINING.

BECAUSE OF THE FINDINGS WE HAVE ALREADY MADE, IT WILL NOT BE NECESSARY FOR US TO DEAL WITH THE EXERCISE OF OUR DISCRETION UNDER SECTION 6 (2) OF THE LABOUR RELATIONS ACT.

THIS APPLICATION IS THEREFORE DISMISSED."

BOARD MEMBER G.R.HARVEY DISSENTED AND SAID:

"I DISSENT. FOR THE REASONS GIVEN BY ME IN MY DISSENT DATED APRIL 10, 1962 IN THE PREVIOUS APPLICATION, I WOULD FIND THE BARGAINING UNIT PROPOSED BY THE APPLICANT TO BE APPROPRIATE AND I WOULD DIRECT A REPRESENTATION VOTE IN THIS CASE."

7676-63-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA (AFL-CIO) (CLC) LOCAL 527 (APPLICANT) v. PALINA CONSTRUCTION LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"HAVING REGARD TO THE EVIDENCE BEFORE THE BOARD AND IN PARTICULAR TO THE STATEMENTS OF PERSONS OBTAINED BY THE EXAMINER AS SET OUT IN HIS REPORT DATED FEBRUARY 28TH, 1964, THE BOARD IS UNABLE TO FIND THAT THE PERSONS ALLEGED BY THE APPLICANT TO BE AFFECTED BY THIS APPLICATION WERE EMPLOYEES OF THE RESPONDENT ON THE DATE OF THE MAKING OF THE APPLICATION OR THEREAFTER."

THIS FINDING MUST NOT BE CONSTRUED TO MEAN THAT AN EMPLOYER CEASES TO BE AN EMPLOYER FOR THE PURPOSES OF THE LABOUR RELATIONS ACT BY THE SIMPLE EXPEDIENT OF TRANSFERRING NAMES FROM ONE PAY-ROLL TO ANOTHER WITHOUT, AT LEAST, APPROPRIATE AND TIMELY NOTICE TO THE EMPLOYEES CONCERNED.

IN THE RESULT, THIS APPLICATION IS DISMISSED."

7753-63-R: HOTEL & RESTAURANT WORKERS INTERNATIONAL UNION, LOCAL 197, HAMILTON (APPLICANT) v. WELLINGTON HOUSE (RESPONDENT). (6 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"THE APPLICANT WAS CERTIFIED BY THE BOARD ON SEPTEMBER 26TH, 1957 AS BARGAINING AGENT FOR ALL EMPLOYEES OF WELLINGTON HOUSE AT HAMILTON, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER.

A COLLECTIVE AGREEMENT CAME INTO EFFECT BETWEEN THE PARTIES ON THE 1ST DAY OF JANUARY, 1958 AND REMAINED IN FORCE UNTIL DECEMBER 31ST, 1959 WITH AUTOMATIC RENEWAL FROM YEAR TO YEAR SUBJECT TO WRITTEN NOTICE BY EITHER PARTY.

HAVING REGARD TO THE FACT THAT THE PARTIES AGREE THAT THE COLLECTIVE AGREEMENT REFERRED TO IN PARAGRAPH 2 HAS AUTOMATICALLY RENEWED ITSELF FROM YEAR TO YEAR AND AT THIS DATE IS IN FULL FORCE AND EFFECT, THE BOARD FINDS THAT THIS APPLICATION IS UNTIMELY."

7794-63-R: HOTELS, CLUBS, RESTAURANTS AND TAVERNS EMPLOYEES UNION LOCAL 261 AFFILIATED WITH A.F. OF L.-C.I.O. AND C.L.C. (APPLICANT) v. THE TALISMAN MOTOR INN (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS HOTEL IN OTTAWA, SAVE AND EXCEPT MANAGER, FOOD AND BEVERAGE CONTROLLER, CHEF, HOUSEKEEPER AND PERSONS ABOVE THE RANKS OF MANAGER, FOOD AND BEVERAGE CONTROLLER, CHEF AND HOUSEKEEPER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (57 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES)

7802-63-R: JARRY ELECTRONICS EMPLOYEES' ASSOCIATION (APPLICANT) v. JARRY HYDRAULICS LIMITED JARRY ELECTRONICS DIVISION (RESPONDENT) (84 EMPLOYEES).

7821-63-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL/CIO:CLC (APPLICANT) v. BARAN ASSOCIATES LIMITED (RESPONDENT).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AT ITS ST. CLAIR HOTEL IN SARNIA, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND OFFICE STAFF." (2 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES)

7828-63-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL/CIO (APPLICANT) v. REGAL MEAT MARKERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES IN METROPOLITAN TORONTO, SAVE AND EXCEPT OWNER-MANAGERS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (10 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES)

7833-63-R: KINGSTON TYPOGRAPHICAL UNION LOCAL 204 (APPLICANT) v. HANSEN & EDGAR LTD. (COMPOSING ROOM, KINGSTON) (RESPONDENT) (7 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"THE APPLICANT HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT AT KINGSTON ENGAGED IN COMPOSING ROOM WORK, SAVE AND EXCEPT NON-WORKING FOREMEN.

ON FEBRUARY 12TH, 1960, THE APPLICANT WAS CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT AT KINGSTON ENGAGED IN COMPOSING ROOM WORK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN.

IN THE ABSENCE OF ANY EVIDENCE TO THE CONTRARY, THE BOARD THEREFORE FINDS THAT THE APPLICANT CONTINUES TO BE THE BARGAINING AGENT FOR ALL THE EMPLOYEES OF THE RESPONDENT AFFECTED BY THE INSTANT APPLICATION AS DEFINED IN THE BOARD'S CERTIFICATE DATED FEBRUARY 12TH, 1960.

IN VIEW OF THE ABOVE FINDINGS AND FOR THE REASONS GIVEN BY THE BOARD IN THE LOBLAW GROCETERIAS COMPANY LIMITED CASE, D.L.S. 7-1115, IT IS UNNECESSARY FOR THE BOARD TO PROCESS THIS APPLICATION FURTHER AND THIS APPLICATION IS ACCORDINGLY TERMINATED."

7844-63-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. McNAMARA - PITTS (RESPONDENT). (18 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 680)

7951-63-R: EMPLOYEES' ASSOCIATION OF MARKETING DEPARTMENT SUN OIL COMPANY LIMITED (APPLICANT) v. SUN OIL COMPANY LIMITED (RESPONDENT) (10 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"THE APPLICANT HAVING FAILED TO SATISFY THE BOARD THAT IT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT, THIS APPLICATION IS ACCORDINGLY DISMISSED."

8037-63-R: JOINT BOARD CLOAK, SUIT AND SKIRT MAKERS UNION, INTERNATIONAL LADIES GARMENT WORKERS' UNION (APPLICANT) v. GAYTOWN SPORTSWEAR (TORONTO) (RESPONDENT). (43 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 680)

8056-63-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) v. G.& H. STEEL SERVICE OF CANADA LTD. (RESPONDENT). (7 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"IN THIS APPLICATION FOR CERTIFICATION THE RESPONDENT SUBMITS THAT THE EMPLOYEES AFFECTED BY THE APPLICATION ARE ALREADY COVERED BY A SUBSISTING COLLECTIVE AGREEMENT. THE RESPONDENT AND THE APPLICANT HAVE A COLLECTIVE AGREEMENT COVERING RODMEN WORKING WITHIN A 25 MILE RADIUS OF THE TORONTO CITY HALL PLUS AN AREA TO THE NORTH THEREOF WHICH IS NOT MATERIAL IN THIS CASE. AT THE TIME OF THE AGREEMENT WAS ENTERED INTO THE PARTIES CAME TO AN ORAL UNDERSTANDING WITH RESPECT TO EMPLOYEES COVERED BY THE AGREEMENT BEING SENT OUT OF THE AREA TO WORK. THE RESPONDENT IN A LETTER TO THE APPLICANT PUT INTO WRITING THE ORAL UNDERSTANDING AND STATED THAT IT MAY BE CONSIDERED TO BE PART OF THE NEW COLLECTIVE AGREEMENT.

SUBSEQUENTLY, THE RESPONDENT STARTED OPERATIONS IN WHITBY WHICH IS OUTSIDE THE 25 MILE AREA. THE ONLY EMPLOYEES ON THE JOB WERE THOSE SENT OUT FROM TORONTO. THERE HAS BEEN NO LOCAL HIRING OF EMPLOYEES. A QUESTION AROSE WITH RESPECT TO THE PAYMENT OF BOARD ALLOWANCE AND THIS MATTER WAS TAKEN UP BY THE APPLICANT WITH THE RESPONDENT AND THE MATTER WAS REMEDIED.

THE APPLICANT IN A LETTER TO THE RESPONDENT MADE REFERENCE TO THE DISPUTE AND ITS SETTLEMENT AND THEN WENT ON TO MAKE A FORMAL CLAIM FOR BACK ROOM AND BOARD ALLOWANCES. SUBSEQUENTLY THIS APPLICATION FOR CERTIFICATION WAS FILED.

HAVING REGARD TO THE ABOVE CIRCUMSTANCES, WE FIND THAT THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE PARTIES WAS AMENDED BY THE PARTIES AND THAT THIS AMENDMENT HAS BEEN REDUCED TO WRITING AND CONSTITUTES A BINDING AGREEMENT BETWEEN THE PARTIES WITHIN THE MEANING OF THE PRINCIPLES SET DOWN IN THE CANADA MACHINERY CORPORATION CASE (1961) C.C.H. CANADIAN LABOUR LAW REPORTS 16,194, C.L.S. 76-729. SEE ALSO THE BEACH FOUNDRY CASE (1945) D.L.S. 7-1201 AND THE FOUNDATION COMPANY OF CANADA CASE (1957) C.C.H. CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER '55-'59, 16,078, C.L.S. 76-555.

SO THAT THERE MAY BE NO MISUNDERSTANDING ABOUT OUR FINDINGS IN THIS MATTER, WE WISH TO EMPHASIZE THAT THE AGREEMENT COVERS ONLY EMPLOYEES SENT OUT FROM TORONTO TO DO A JOB OUTSIDE THE 25 MILE RADIUS AREA.

IN THE RESULT, WE FIND THAT BY REASON OF THE EXISTENCE OF THE COLLECTIVE AGREEMENT AS AMENDED THE APPLICATION IS UNTIMELY UNDER THE PROVISIONS OF THE LABOUR RELATIONS ACT AND IS ACCORDINGLY DISMISSED."

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

7719-63-R: LOCAL UNION NO. 2108, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (A.F.L.-C.I.O.-C.L.C.) (APPLICANT) v. TORONTO ELECTRIC COMMISSIONERS (RESPONDENT) v. TORONTO HYDRO-ELECTRIC SYSTEM COMMITTEE OF STAFF EMPLOYEE REPRESENTATIVES (INTERVENER).

VOTING CONSTITUENCY: "ALL STAFF EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE EXECUTIVE GENERAL OFFICE STAFF, THE PERSONNEL OFFICE STAFF, THE CLAIMS OFFICE STAFF, MANAGERS, ASSISTANT MANAGERS, SUPERVISORS AND ASSISTANT EXECUTIVES, FOREMEN EMPLOYEES PERFORMING FOREMAN'S FUNCTION, PROFESSIONAL ENGINEERS, CONFIDENTIAL SECRETARIES TO THE MANAGERS AND STUDENTS ENGAGED DURING SUMMER VACATION PERIOD." (672 EMPLOYEES IN THE JNIT).

NUMBER OF NAMES ON REVISED ELIGIBILITY LIST	609
NUMBER OF BALLOTS CAST	594
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS SEGREGATED (NOT COUNTED)	13
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	265
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	328

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

7580-63-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. HEATH & SHERWOOD DRILLING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN DIAMOND DRILLING AT ITS LEVACK, VICTORIA MINE, JOE LAKE, NELSON LAKE, MORGAN MINE, AND CREIGHTON MINE MINE SITES IN THE DISTRICT OF SUDBURY, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (46 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED ELIGIBILITY LIST	34
NUMBER OF BALLOTS CAST	34
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED AS OPPOSED TO APPLICANT	28

7740-63-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL #493 (APPLICANT) v. GEORGE STONE & SONS LIMITED (RESPONDENT)

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE CITY OF SAULT STE. MARIE AND IN THE TOWNSHIPS OF PRINCE, KORAH AND TARENTOROUS AND IN THE UNORGANIZED TOWNSHIPS OF PARKE AND AWENGE AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

ON FEBRUARY 25, 1964 THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"HAVING REGARD TO THE REPORT OF THE EXAMINER, SIGNED BY ALL PARTIES THE BOARD DIRECTS THAT THIS MATTER BE LISTED FOR HEARING TO INQUIRE INTO THE DOCUMENT FILED IN OPPOSITION TO THE APPLICATION.

THE REPORT OF THE EXAMINER DID NOT REACH THE BOARD UNTIL MONDAY, FEBRUARY 24TH. THE POTENTIAL HEARING DATE FOR THE APPLICATION WAS WEDNESDAY, FEBRUARY 26TH. IT IS THUS NOT POSSIBLE TO GIVE THE PARTIES THE TWO DAY NOTICE OF HEARING REQUIRED BY THE RULES. IN THESE CIRCUMSTANCES AND HAVING REGARD TO THE OTHER COMMITMENTS OF THE BOARD, THE REGISTRAR IS DIRECTED TO LIST THE MATTER FOR HEARING ON WEDNESDAY, MARCH 4TH.

THE EMPLOYEES OBJECTING TO THE APPLICATION HAVE REQUESTED THAT THE HEARING BE HELD IN SAULT STE. MARIE. THE APPLICANT OPPOSES THIS REQUEST. THE RESPONDENT REQUESTS A HEARING BUT MAKES NO SUBMISSION ON THE QUESTION OF VENUE. IN A CERTIFICATION CASE, IN THE ABSENCE OF AGREEMENT OF THE PARTIES (AND THEN NOT NECESSARILY EVEN IN THOSE CIRCUMSTANCES), IT HAS NOT BEEN THE POLICY OF THE BOARD, ON A FIRST HEARING, TO ACCEDE TO A REQUEST FOR A HEARING OUT OF TORONTO ON THE GROUNDS ADVANCED BY THE REPRESENTATIVE OF THE OBJECTORS. THE REGISTRAR IS THEREFORE DIRECTED TO LIST THE MATTER FOR HEARING IN TORONTO."

ON MARCH 4, 1964 THE BOARD FURTHER ENDORSED THE RECORD IN PART AS FOLLOWS:

"IN THE OPINION OF THE BOARD THIS IS NOT A CASE WHERE THE BOARD OUGHT TO HAVE REGARD TO ANY INCREASE IN THE NUMBER IN THE BARGAINING UNIT AT A FUTURE DATE. REFERENCE IS MADE TO SECTION 92 (2) OF THE LABOUR RELATIONS ACT."

NUMBER OF NAMES ON ELIGIBILITY LIST	4
NUMBER OF BALLOTS CAST	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED AS OPPOSED TO APPLICANT	4 4

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING MARCH

6880-63-R: AMALGAMATED LITHOGRAPHERS OF AMERICA, LOCAL 12 (APPLICANT) v. WALLACE-DAVEY PRINTING COMPANY LIMITED (RESPONDENT).

7926-63-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. LANGPORT CONSTRUCTION (RESPONDENT) (10 EMPLOYEES).

7932-63-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. THOMAS BUILT BUSES CANADA LIMITED (WOODSTOCK) (RESPONDENT) (27 EMPLOYEES).

8114-63-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 2480 (APPLICANT) v. JAMES KEMP CONSTRUCTION LIMITED (COUNTY OF SIMCOE) (RESPONDENT) (2 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"A COLLECTIVE AGREEMENT DATED MARCH 24TH, 1964 AND EFFECTIVE UNTIL JUNE 30TH, 1965 BETWEEN THE APPLICANT AND THE RESPONDENT WAS FILED WITH THE BOARD BY THE APPLICANT.

IN THESE CIRCUMSTANCES THERE IS NO NEED TO PROGRESS THE APPLICATION FURTHER AND THE PROCEEDINGS ARE ACCORDINGLY TERMINATED."

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

DISPOSED OF DURING MARCH

7540-63-R: HERBERT BARRETT & GERALD ABELL (APPLICANTS) v. UNITED STEELWORKERS OF AMERICA (RESPONDENT) v. AIR LIQUIDE (INTERVENER) (GRANTED) (3 EMPLOYEES).

(Re: AIR LIQUIDE,
NIAGARA FALLS, ONTARIO)

NUMBER OF NAMES ON ELIGIBILITY LIST	2
NUMBER OF BALLOTS CAST	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AS OPPOSED TO RESPONDENT	2

7919-63-R: DAN ROBINSON ET AL (APPLICANT) v. CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT) v. THE PARRY SOUND GENERAL HOSPITAL (INTERVENER) (WITHDRAWN) (136 EMPLOYEES).

(Re: THE PARRY SOUND GENERAL HOSPITAL,
PARRY SOUND, ONTARIO).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"ALTHOUGH THE APPLICANT HAS REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION HEREIN, THE BOARD FOLLOWING ITS USUAL PRACTICE IN SUCH CASES, DISMISSED THE APPLICATION."

7920-63-R: MAURICE LALONDE (APPLICANT) v. LOCAL UNION 1681 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (RESPONDENT). (GRANTED) (2 EMPLOYEES).

(RE: BERGERON ELECTRIC LTD.,
CORNWALL, ONTARIO.)

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"HAVING REGARD TO ALL THE EVIDENCE AND REPRESENTATIONS MADE TO THE BOARD, THE BOARD IS SATISFIED THAT NOT LESS THAN FIFTY PERCENT OF THE EMPLOYEES OF BERGERON ELECTRIC LTD. IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT.

HAVING REGARD TO THE REPRESENTATIONS MADE BY THE RESPONDENT TO THE BOARD IN ITS TELEGRAM DATED MARCH 18TH, 1964, THE BOARD IS SATISFIED THAT THE RESPONDENT DOES NOT DESIRE TO CONTINUE TO REPRESENT THE EMPLOYEES OF BERGERON ELECTRIC LTD. IN THE BARGAINING UNIT.

PURSUANT TO SECTION 43(6) OF THE LABOUR RELATIONS ACT, THE BOARD DECLARES THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF BERGERON ELECTRIC LTD. FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT."

7954-63-R: H. BAUER (APPLICANT) v. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (RESPONDENT). (GRANTED). (3 EMPLOYEES).

(RE: ELCO ELECTRIC LTD.,
CORNWALL, ONTARIO)

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT WHICH WAS HEARD BY THE BOARD ON MARCH 24TH, 1964.

SUBSEQUENT TO THE HEARING ON MARCH 24TH, 1964, THE BOARD RECEIVED THE FOLLOWING TELEGRAM FROM THE RESPONDENT:

"BE ADVISED IBEW HAS NO INTEREST IN TERMINATION PROCEEDINGS RE EMPLOYEES OF ELCO ELECTRIC CORNWALL ONTARIO."

THE BOARD THEREFORE FINDS THAT THE RESPONDENT HAS ABANDONED ITS BARGAINING RIGHTS AND THE BOARD ACCORDINGLY DECLARES THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF ELCO ELECTRIC LTD. AT CORNWALL FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT."

8051-63-R: NORMAN GRAY AND OTHERS, EMPLOYEES OF SAULT WINDSOR HOTEL LIMITED, (APPLICANTS) v. RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION LOCAL 412 (RESPONDENT) (DISMISSED) (9 EMPLOYEES).

(RE: SAULT WINDSOR HOTEL LIMITED,
SAULT STE. MARIE, ONTARIO.)

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"THE APPLICANT MADE APPLICATION UNDER SECTION 45 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT DETERMINED BY THE BOARD IN ITS CERTIFICATE DATED JANUARY 7TH, 1964 FOR WHICH IT IS THE BARGAINING AGENT.

HAVING REGARD TO THE FACT THAT THE APPLICATION WAS MADE LESS THAN SIXTY DAYS AFTER THE DATE ON WHICH THE RESPONDENT GAVE WRITTEN NOTICE OF ITS DESIRE TO BARGAIN THE BOARD FINDS THAT THE APPLICATION IS UNTIMELY.

THE APPLICATION, ACCORDINGLY, IS DISMISSED."

APPLICATION FOR DECLARATION CONCERNING STATUS OF SUCCESSOR TRADE UNION
DISPOSED OF DURING MARCH

7691-63-R: LOCAL UNION 304, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK & DISTILLERY WORKERS OF AMERICA, A.F.L.-C.I.O.-C.L.C. (APPLICANT) v. DOMINION MALTING (ONTARIO) LIMITED (RESPONDENT) v. LOCAL 593, INTERNATIONAL CHEMICAL WORKER'S UNION (PREDECESSOR).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"THE BOARD FINDS THAT THE APPLICANT IS, BY REASON OF TRANSFER OF JURISDICTION, THE SUCCESSOR TO LOCAL 593 INTERNATIONAL CHEMICAL WORKER'S UNION, AFL-CIO-CLC WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN DOMINION MALTING (ONTARIO) LIMITED AND LOCAL 593 INTERNATIONAL CHEMICAL WORKER'S UNION A.F.OF L.-C.I.O. EFFECTIVE FROM APRIL 2ND, 1962 TO MARCH 31ST, 1965, WITH YEAR TO YEAR RE-NEWAL SUBJECT TO NOTICE."

7762-63-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. CAMPBELL MANUFACTURING COMPANY LTD. (RESPONDENT) v. SPORTING GOODS WORKERS FEDERAL LABOUR UNION LOCAL 24816 AFFILIATED WITH THE CANADIAN LABOUR CONGRESS (PREDECESSOR.) (GRANTED).

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"THE BOARD FINDS THAT THE APPLICANT IS, BY REASON OF TRANSFER OF JURISDICTION, THE SUCCESSOR TO SPORTING GOODS WORKERS FEDERAL LABOUR UNION LOCAL 24816 AFFILIATED WITH THE CANADIAN LABOUR CONGRESS WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN CAMPBELL MANUFACTURING COMPANY LTD. AND SPORTING GOODS WORKERS FEDERAL LABOUR UNION LOCAL 24816, AFFILIATED WITH THE CANADIAN LABOUR CONGRESS."

APPLICATION FOR DETERMINATION UNDER SECTION 79
DISPOSED OF DURING MARCH

7055-63-U: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) v. RIVERSIDE POULTRY COMPANY LIMITED (RESPONDENT).

APPLICATION FOR DETERMINATION UNDER SECTION 34 (5) OF THE ACT

8053-63-R: GENERAL TRUCK DRIVERS' UNION LOCAL 879 (APPLICANT) v. MAMMY'S BREAD LIMITED (HAMILTON) - A DIVISION OF WONDER BAKERIES LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"THE PARTIES HAVING AGREED THAT ALL CURRENT PROCEEDINGS BY ANY OF THE PARTIES AS WITHDRAWN, THIS PROCEEDING IS TERMINATED."

APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL
DISPOSED OF DURING MARCH

7947-63-U: ROBERT McALPINE LTD. (APPLICANT) v. G. MARTIN ET AL (RESPONDENTS). (GRANTED)

(SEE INDEXED ENDORSEMENT PAGE 68)

APPLICATION THAT LOCKOUT UNLAWFUL DISPOSED OF DURING MARCH 1964.

8066-63-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) v. CRONIN'S VARIETY STORES (ESPAÑOLA). (RESPONDENT) (WITHDRAWN)

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING MARCH

7644-63-U: UNITED PACKINGHOUSE FOOD & ALLIED WORKERS AFL:CIO:CLC (APPLICANT) v. ESSEX PACKERS LIMITED (RESPONDENT) (DISMISSED)

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT FOR OFFENCES ALLEGED TO HAVE BEEN COMMITTED IN CONTRAVENTION OF SECTION 50 OF THE LABOUR RELATIONS ACT.

THERE IS NO EVIDENCE WHICH IN THE OPINION OF THE BOARD SUPPORTS THE ALLEGATIONS OF THE APPLICANT THAT GEORGE WORDOCK WAS DISCHARGED BY THE RESPONDENT ON JANUARY 24TH, 1964 IN VIOLATION OF SECTION 50 OF THE LABOUR RELATIONS ACT.

THE APPLICANT HAVING FAILED TO SATISFY THE ONUS UPON IT TO ESTABLISH A PRIMA FACIE CASE IN SUPPORT OF ITS ALLEGATIONS, THIS APPLICATION IS DISMISSED."

7696-63-U: ROBERT McALPINE LTD. (APPLICANT) v. G. MARTIN ET AL (RESPONDENT) TO (WITHDRAWN)

8036-63-U
(INCLUSIVE)

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE)

DISPOSED OF DURING MARCH

7465-63-U: RETAIL, WHOLESALE & DEPARTMENT STORE UNION, AFL-CIO-CLC, (COMPLAINANT) v. FOTHERINGHAM'S SPEEDY SERVICE CLEANERS, LIMITED (RESPONDENT).

7625-63-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, (UE) (COMPLAINANT) v. AMALGAMATED ELECTRIC CORPORATION LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"THIS IS A COMPLAINT FOR RELIEF UNDER SECTION 65 OF THE LABOUR RELATIONS ACT.

THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSON, FAYE WRIGHT (NEE WALLACE), WAS DISCHARGED FROM HER EMPLOYMENT BY JACK LYFORD, FOREMAN OF THE RESPONDENT, ON JANUARY 23RD, 1964 IN CONTRAVENTION OF SECTION 50 OF THE LABOUR RELATIONS ACT. THE RESPONDENT ALLEGES THAT SHE WAS HIRED AS A PROBATIONARY EMPLOYEE AND THAT HER EMPLOYMENT WAS TERMINATED ON JANUARY 23RD, 1964 BECAUSE SHE WAS NOT A SATISFACTORY EMPLOYEE.

ON THE EVIDENCE BEFORE US, WE ARE NOT SATISFIED THAT JACK LYFORD OR ANY OTHER MEMBER OF MANAGEMENT HAD KNOWLEDGE OF MRS. WRIGHT'S LEADING ROLE IN THE UNION ORGANIZING CAMPAIGN OR THAT SHE WAS A MEMBER OF THE UNION AT THE TIME OF HER DISCHARGE.

ACCORDINGLY, THE BOARD FINDS THAT MRS. WRIGHT WAS NOT DISCHARGED ON JANUARY 23RD, 1964 FOR UNION ACTIVITY IN CONTRAVENTION OF SECTION 50 OF THE LABOUR RELATIONS ACT.

THE COMPLAINT, THEREFORE IS DISMISSED."

BOARD MEMBER E. BOYER DISSENTED AND SAID:

"I DISSENT. ON THE EVIDENCE BEFORE US, I WOULD HAVE FOUND THAT MANAGEMENT HAD KNOWLEDGE OF THE LEADING ROLE OF MRS. WRIGHT IN THE UNION ORGANIZING CAMPAIGN, AND THAT HER DISCHARGE WAS MOTIVATED AS A RESULT OF THIS KNOWLEDGE."

7646-63-U: UNITED PACKINGHOUSE FOOD & ALLIED WORKERS AFL-CIO-CLC (COMPLAINANT) v. ESSEX PACKERS LIMITED (RESPONDENT).

7734-63-U: LOCAL UNION 304, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) v. CANADA DRY LIMITED (TORONTO) (RESPONDENT).

7790-63-U: INTERNATIONAL BROTHERHOOD OF BOOKBINDERS (COMPLAINANT) v. HUTCHINGS & PATRICK LIMITED (OTTAWA) (RESPONDENT).

7791-63-U: UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) v. NATIONAL RUBBER COMPANY (RESPONDENT).

7801-63-U: UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) v. NATIONAL RUBBER COMPANY (RESPONDENT).

7811-63-U: UNITED STEELWORKERS OF AMERICA, (COMPLAINANT) v. WALTER E. SELCK OF CANADA LIMITED (RESPONDENT).

7812-63-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. AEROCIDE DISPENSERS LIMITED (RESPONDENT).

7824-63-U: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL UNION 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, (COMPLAINANT) v. CORCORAN FOODS LTD. (RESPONDENT).

7480-63-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) v. PEMBROKE VENEER LIMITED (RESPONDENT).

7848-63-U: LOCAL UNION 633 AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (COMPLAINANT) v. REGAL MEAT MARKETS LIMITED (TORONTO) (RESPONDENT).

7863-63-U: HOTELS, CLUBS, RESTAURANTS, TAVERNS, EMPLOYEES UNION LOCAL 261, AFFILIATED WITH A.F.O.F. L. CIO AND CLC (COMPLAINANT) v. TALISMAN MOTOR INN (RESPONDENT)

7904-63-U: UNITED RUBBER, CORK LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL-CIO: CLC (COMPLAINANT) v. NATIONAL RUBBER COMPANY (RESPONDENT).

7944-63-U: THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), (COMPLAINANT) v. THOMAS BUILT BUSES CANADA LIMITED (WOODSTOCK) RESPONDENT).

7953-63-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. WIMCO STEEL SALES Co. LIMITED (RESPONDENT).

7956-63-U: JOHN THEISEN (COMPLAINANT) v. THE ONTARIO PAPER Co. LTD. (RESPONDENT)
(SEE INDEXED ENDORSEMENT PAGE 685)

8064-63-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL,CIO,CLC (COMPLAINANT) v. CRONIN'S VARIETY STORES (RESPONDENT).

8089-63-U: MR. MELBOURNE WILSON (COMPLAINANT) v. MR. MELBOURNE FERRITT (RESPONDENT)

8090-63-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. BURROWES MANUFACTURING COMPANY (RESPONDENT).

8101-63-U: UNITED STEELWORKERS OF AMERICA, (COMPLAINANT) v. BURROWES MANUFACTURING COMPANY (RESPONDENT).

CERTIFICATION INDEXED ENDORSEMENTS

7450-63-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. LEIGH METAL PRODUCTS LIMITED (RESPONDENT) (GRANTED MARCH 1964.)

THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"AT THE HEARING BEFORE THE BOARD ON JANUARY 8TH, 1964 COUNSEL FOR THE RESPONDENT CONTENDED THAT THIS APPLICATION SHOULD BE DISMISSED ON THE GROUNDS THAT ONE LARRY TERRIO, AN EMPLOYEE OF THE RESPONDENT, HAD THREATENED PHYSICAL VIOLENCE AGAINST EMPLOYEES WHO DID NOT MAINTAIN THEIR MEMBERSHIP IN THE UNION. MORE SPECIFICALLY THE RESPONDENT ALLEGED THAT TERRIO IN THE PRESENCE OF LILLIAN FLYNN AND OTHER EMPLOYEES HAD THREATENED TO "HOLD ANY ONE WHILE THEY WERE KICKED TO DEATH IF THEY PULLED OUT OF THE UNION."

THE EVIDENCE OF LILLIAN FLYNN SUPPORTS THE RESPONDENT'S ALLEGATION AND IS CORROBORATED BY RANIE GALLANT. TERRIO DENIES MAKING THE ALLEGED THREAT AND HIS EVIDENCE IS SUPPORTED BY THAT OF HELEN SNELGROVE.

LET US ASSUME FOR PURPOSES OF ARGUMENT, BUT WITHOUT MAKING A FINDING, THAT TERRIO MADE THE STATEMENT ATTRIBUTED TO HIM BY MRS. FLYNN. HAVING REGARD TO ALL THE EVIDENCE RELATING TO THE INCIDENT, WE ARE OF THE OPINION THAT WHILE THE REMARK MAY HAVE BEEN RASH OR EVEN PROVOCATIVE, IT WAS NOT A THREAT MADE IN EARNEST AND THE EVIDENCE INDICATES THAT IT WAS NOT TAKEN SERIOUSLY BY THE EMPLOYEES PRESENT. WE ARE FURTHER OF THE OPINION THAT TERRIO'S REMARK DID NOT INFLUENCE THE SUBSEQUENT CONDUCT OF ANY OF THE EMPLOYEES. WE ACCORDINGLY ARE NOT PREPARED TO FIND THAT THE ALLEGED THREAT WEAKENS OR QUALIFIES THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT.

THE RESPONDENT ALSO ALLEGED THAT FIVE EMPLOYEES DID NOT MAKE ANY MONEY PAYMENT AT THE TIME, OR SUBSEQUENT TO SIGNING UNION MEMBERSHIP CARDS. THE BOARD, AFTER CONDUCTING ITS OWN INITIAL INVESTIGATION CONCERNING THE ALLEGATIONS, SET THE MATTER DOWN FOR HEARING TO INQUIRE INTO THE CIRCUMSTANCES SURROUNDING THE PAYMENT OR NON-PAYMENT OF MEMBERSHIP INITIATION FEES BY GEORGE GALLANT, RANIE GALLANT, MARY STROCUZZA, JEAN WILSON AND MARJORIE GLOVER.

MEMBERSHIP APPLICATION CARDS AND ATTACHED RECEIPTS WERE SUBMITTED TO THE BOARD BY THE APPLICANT ON BEHALF OF THE FIVE-NAMED PERSONS. AT THE BOARD HEARING ON JANUARY 30TH, EACH OF THEM TESTIFIED THAT HE OR SHE HAD SIGNED THE APPLICATION CARD AND RECEIPT SUBMITTED AS EVIDENCE OF MEMBERSHIP BY THE UNION. THE RECEIPT IN EACH CASE INDICATES THE PAYMENT OF \$1.00 ON ACCOUNT OF DUES. THE SIGNATURE OF EACH OF THE FIVE EMPLOYEES APPEARS IMMEDIATELY BELOW A PRINTED STATEMENT OF THE RECEIPT WHICH READS, "I PAID THE ABOVE AMOUNT" (WHICH REFERS TO THE \$1.00 PAYMENT ON ACCOUNT OF DUES).

THERE IS COMPLETE CONFLICT BETWEEN THE EVIDENCE OF THE FIVE EMPLOYEES CONCERNED, (ALL OF WHOM TESTIFIED THAT, IN FACT, THEY HAD NOT PAID THE \$1.00 INITIATION FEE INDICATED ON THE RECEIPT) AND THE EVIDENCE OF THE COLLECTORS, TERRIO AND SNELGROVE, (WHO TESTIFIED THAT THE INITIATION FEE HAD BEEN PAID IN EACH CASE).

EVIDENCE WAS ADDUCED IN SUPPORT OF THE RESPONDENT'S ALLEGATION THAT GEORGE AND RANIE GALLANT HAD NOT MADE ANY MONEY PAYMENT. ON THE OTHER HAND, EVIDENCE WAS ADDUCED BY THE APPLICANT CORROBORATING THE TESTIMONY OF TERRIO AND SNELGROVE WITH RESPECT TO THE PAYMENT OF THE \$1.00 FEE BY THE TWO GALLANTS, JEAN WILSON AND MARJORIE GLOVER.

IN LIGHT OF THE CONFLICTING EVIDENCE THE BOARD HAS CAREFULLY ASSESSED THE TESTIMONY OF EACH WITNESS. HAVING CONSIDERED ALL THE EVIDENCE, THE BOARD HAS CONCLUDED THAT IT IS NOT PREPARED TO FIND THAT THE EVIDENCE OF MEMBERSHIP SUBMITTED ON BEHALF OF THE FIVE PERSONS IN QUESTION HAS NOT MET THE BOARD'S MEMBERSHIP REQUIREMENTS."

7844-63-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. McNAMARA - PITTS (RESPONDENT) (DISMISSED MARCH 1964.)

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"McNAMARA CONSTRUCTION OF ONTARIO LIMITED AND C.A.PITTS GENERAL CONTRACTOR LTD. ENTERED INTO A JOINT VENTURE AGREEMENT FOR THE PERFORMANCE OF A CONSTRUCTION CONTRACT FOR THE MUNICIPALITY OF METROPOLITAN TORONTO. THE NAME OF THE VENTURE IS McNAMARA - PITTS, NAMED AS RESPONDENT IN THIS APPLICATION. McNAMARA - PITTS IS NOT AN INCORPORATED ENTITY.

McNAMARA CONSTRUCTION OF ONTARIO LIMITED IS BOUND BY A COLLECTIVE AGREEMENT BETWEEN THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION AND THE CARPENTERS DISTRICT COUNCIL OF TORONTO AND VICINITY. IT WAS AGREED BY THE PARTIES THAT C.A.PITTS GENERAL CONTRACTOR LTD. IS ALSO BOUND BY THIS AGREEMENT. THE COLLECTIVE AGREEMENT IN QUESTION REMAINS IN EFFECT UNTIL APRIL 30, 1965, AND COVERS CARPENTERS AND THEIR APPRENTICES.

THE PRESENT APPLICATION, BY THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA IS FOR CARPENTERS AND THEIR APPRENTICES IN AN AREA SUBSTANTIALLY SIMILAR TO THAT COVERED BY THE COLLECTIVE AGREEMENT REFERRED TO ABOVE. THE EMPLOYEES AFFECTED BY THE APPLICATION ARE EMPLOYED ON THE JOB SITE COVERED BY THE JOINT VENTURE AGREEMENT. THAT SITE IS WITHIN THE AREA COVERED BY THE AFOREMENTIONED COLLECTIVE AGREEMENTS.

AFTER CAREFULLY CONSIDERING THE EVIDENCE BEFORE US INCLUDING THE AGREEMENT CONSTITUTING THE JOINT VENTURE WE ARE OF THE OPINION THAT THE COLLECTIVE AGREEMENT WHICH EACH OF THE TWO COMPANIES HAS WITH THE CARPENTERS DISTRICT COUNCIL OF TORONTO AND VICINITY IS BINDING ON THE COMPANIES IN RESPECT TO THE WORK BEING PERFORMED BY THEM UNDER THE JOINT VENTURE AGREEMENT.

IN THE RESULT THEREFORE WE FIND THAT THE APPLICATION IS UNTIMELY UNDER THE PROVISIONS OF THE LABOUR RELATIONS ACT AND IS THEREFORE DISMISSED."

8037-63-R: JOINT BOARD CLOAK, SUIT AND SKIRT MAKERS UNION, INTERNATIONAL LADIES GARMENT WORKERS' UNION (APPLICANT) v. GAYTOWN SPORTSWEAR (TORONTO) (RESPONDENT). (DISMISSED MARCH 1964.)

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"THIS APPLICATION FOR CERTIFICATION WAS MADE BY JOINT BOARD CLOAK, SUIT AND SKIRT MAKERS' UNION, INTERNATIONAL LADIES GARMENT WORKERS' UNION. IT WOULD APPEAR THAT THE APPLICANT IS A COUNCIL OF TRADE UNIONS COMPOSED OF SOME SIX LOCALS OF THE INTERNATIONAL LADIES GARMENT WORKERS' UNION. AT THE HEARING THE APPLICANT REQUESTED THAT THE NAME OF THE APPLICANT BE AMENDED TO SUBSTITUTE LOCAL 14 OF INTERNATIONAL LADIES GARMENT WORKERS' UNION AS THE APPLICANT.

FORM 8, STATEMENT ON STATUS OF TRADE UNION WAS COMPLETED BY THE BUSINESS AGENT OF JOINT BOARD CLOAK, SUIT AND SKIRT MAKERS UNION, INTERNATIONAL LADIES GARMENT WORKERS' UNION ON BEHALF OF THAT COUNCIL OF TRADE UNIONS.

FORM 9, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS WAS ALSO COMPLETED ON BEHALF OF THE APPLICANT NAMED IN THE APPLICATION.

APPLICATIONS FOR MEMBERSHIP SUBMITTED FOR CERTAIN EMPLOYEES OF THE RESPONDENT INDICATE THAT WHILE THE EMPLOYEES HAVE APPLIED FOR MEMBERSHIP IN THE INTERNATIONAL LADIES GARMENT WORKERS' UNION, THE LOCAL DESCRIBED IN THE APPLICATION FORM IS NOT LOCAL 14 BUT IS DESCRIBED AS "JT Bd CLOAK".

IF THE BOARD WERE TO GRANT THE AMENDMENT REQUESTED BY THE APPLICANT BY SUBSTITUTING LOCAL 14 OF THE INTERNATIONAL LADIES GARMENT WORKERS' UNION AS APPLICANT, THERE WOULD BE NO EVIDENCE BEFORE THE BOARD THAT LOCAL 14 OF THE INTERNATIONAL LADIES GARMENT WORKERS' UNION IS IN FACT A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT SINCE NO STATEMENT ON STATUS OF TRADE UNION HAS BEEN FILED WITH RESPECT TO LOCAL 14 INTERNATIONAL LADIES GARMENT WORKERS' UNION.

THE BOARD IS OF THE OPINION THAT NAMING THE JOINT BOARD CLOAK, SUIT AND SKIRT MAKERS UNION, INTERNATIONAL LADIES GARMENT WORKERS' UNION AS APPLICANT WAS NOT A BONA FIDE MISTAKE WITHIN THE MEANING OF SECTION 78 OF THE LABOUR RELATIONS ACT AND THE REQUEST TO AMEND THE NAME OF THE APPLICANT IN THIS MATTER IS THEREFORE DENIED.

THE APPLICANT HAVING FAILED TO SATISFY THE BOARD THAT IT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT, THIS APPLICATION IS ACCORDINGLY DISMISSED."

STRIKE UNLAWFUL INDEXED ENDORSEMENT

7947-63-U: ROBERT McALPINE LTD. (APPLICANT) v. G. MARTIN ET AL (RESPONDENTS).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"THIS APPLICATION MADE ON MARCH 6TH, 1964, IS FOR A DECLARATION THAT A STRIKE ENGAGED IN BY EMPLOYEES OF THE APPLICANT IS UNLAWFUL.

THE NAMES OF FOUR RESPONDENTS APPEARING IN THE STYLE OF

CAUSE OF THIS APPLICATION ARE AMENDED TO READ AS FOLLOWS: "J. SUGRUE, P. BASTIANELLI, H. GONCALVES AND D. BUGERA."

THIS APPLICATION IS WITHDRAWN AT THE REQUEST OF THE APPLICANT BY LEAVE OF THE BOARD, WITH RESPECT TO W. MCNEIL AND M. KELLY.

THIS APPLICATION IS DISMISSED WITH RESPECT TO J. O'LEARY SINCE HE WAS NOT SERVED WITH NOTICE OF THESE PROCEEDINGS.

ALL THE RESPONDENTS ARE EMPLOYEES OF THE APPLICANT BOUND BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL UNION #183, WHICH WAS ENTERED INTO ON MAY 31ST, 1963 AND WHICH REMAINS IN FULL FORCE AND EFFECT UNTIL APRIL 30TH, 1965.

ON MONDAY, MARCH 2ND, 1964, A MEETING WAS HELD AT THE REQUEST OF THE OFFICIALS OF LOCAL 183, WITH OFFICIALS OF THE APPLICANT, AT 11:00A.M., IN THE PROJECT OFFICE AT THE SITE WHERE THE RESPONDENTS WERE EMPLOYED ON THE CONSTRUCTION OF A SUBWAY TUNNEL. THE UNION INDICATED THAT IT WISHED TO DISCUSS TWO ISSUES AT THE MEETING. THE FIRST ISSUE WAS A MATTER RELATING TO INCENTIVE PRODUCTION BONUS AND THE SECOND WAS A COMPLAINT THAT ONE OF THE APPLICANT'S STAFF WHO WAS NOT COVERED BY THE COLLECTIVE AGREEMENT HAD PERFORMED WORK OVER THE PREVIOUS WEEKEND WHICH SHOULD HAVE BEEN ASSIGNED TO THE RESPONDENTS.

IT WOULD APPEAR THAT IMMEDIATELY PRIOR TO THE MEETING THE UNION OFFICIALS AND THE 11 RESPONDENTS WHO ATTENDED THE MEETING BECAME AWARE THAT CHRIS JORKAN HAD BEEN ASSIGNED BY THE APPLICANT AS SHIFT FOREMAN ON THE TUNNEL WORK AT THIS PROJECT AND WAS SCHEDULED TO COMMENCE WORK ON THE 3P.M. SHIFT THAT DAY.

AFTER A SHORT DISCUSSION WITH RESPECT TO THE PRODUCTION INCENTIVE BONUS, THE QUESTION OF JORDAN'S ASSIGNMENT BECAME THE MAIN TOPIC OF DISCUSSION AT THE MEETING. THE APPLICANT'S REPRESENTATIVES AT THE MEETING WERE INFORMED BY THE RESPONDENTS REPRESENTATIVES THAT THE RESPONDENTS HAD DECIDED THAT THEY WOULD NOT RETURN TO WORK IF THE APPLICANT PERSISTED IN ITS INTENTION TO ASSIGN JORDAN AS SHIFT FOREMAN. THE REPRESENTATIVES OF THE RESPONDENTS AT THE MEETING WERE ADVISED BY THE APPLICANT THAT THE WORK STOPPAGE WAS CONTRARY TO ARTICLE 17 OF THE COLLECTIVE AGREEMENT BINDING THE RESPONDENTS, WHICH READS AS FOLLOWS:

"ARTICLE 17 - NO STRIKES, NO LOCKOUTS"

IN VIEW OF THE GRIEVANCE AND ARBITRATION PROCEDURE PROVIDED IN THIS AGREEMENT, IT IS AGREED BY THE UNION THAT THERE SHALL BE NO STRIKE OR STOPPAGE OF WORK, EITHER COMPLETE OR PARTIAL AND THE EMPLOYER AGREES THAT DURING THE TERM OF THIS AGREEMENT THERE SHALL BE NO LOCKOUT."

ALL THE RESPONDENTS CEASED WORK ON OR ABOUT MONDAY, MARCH 2ND, 1964 AND HAVE REFUSED TO WORK THEIR REGULAR SHIFTS SINCE MARCH 2ND, 1963 UP TO AND INCLUDING MARCH 12TH, 1964, THE LAST HEARING DATE IN THIS CASE.

ALL THE RESPONDENTS WHO TESTIFIED AT THE HEARING STATED THAT THEY WERE PREPARED TO RETURN TO WORK IF THE APPLICANT WOULD UNDERTAKE THAT CHRIS JORDAN WOULD NOT BE ASSIGNED AS SHIFT FOREMAN ON THE PROJECT WHERE THE RESPONDENTS WERE EMPLOYED.

HAVING REGARD TO ALL THE EVIDENCE BEFORE US, WE ARE SATISFIED THAT THE REFUSAL TO WORK BY THE RESPONDENTS WAS IN COMBINATION OR IN CONCERT OR IN ACCORDANCE WITH A COMMON UNDERSTANDING.

THE RESPONDENTS ARGUED AT THE HEARING THAT THE BOARD SHOULD NOT ISSUE ITS DECLARATION THAT THE RESPONDENTS ENGAGED IN AN UNLAWFUL STRIKE AND REQUESTED THE BOARD TO EXERCISE ITS DISCRETION IN THIS MATTER BASED ON THE RESPONDENTS' ALLEGATIONS THAT THE REFUSAL TO WORK WAS OCCASIONED BY THE CONCERN OF EACH OF THE RESPONDENTS FOR HIS OWN PERSONAL SAFETY.

ASSUMING BUT NOT DECIDING THAT THE WORK STOPPAGE IN THIS MATTER WAS SOLELY BECAUSE OF THE APPLICANT'S INSISTENCE TO ASSIGN JORDAN AS SHIFT FOREMAN, WE WILL DEAL WITH THE EXERCISE OF OUR DISCRETION ON THE FACTS OF THIS CASE.

THE RESPONDENTS TAKE THE POSITION THAT THEY WERE ENTITLED TO STOP WORK IN THE MANNER IN WHICH THEY DID BECAUSE JORDAN AS SHIFT FOREMAN WOULD ENDANGER THE SAFETY OF THE RESPONDENTS. THE RESPONDENTS' EVIDENCE WAS THAT IN THE OPINION OF THE RESPONDENTS, JORDAN WAS INCOMPETENT AND INEXPERIENCED AND BECAUSE OF HIS EXCITABLE NATURE, WOULD ENDANGER THE SAFETY OF THE RESPONDENTS.

APART FROM A FEW ISOLATED INSTANCES GOING AS FAR BACK AS 1961, WHICH ACCORDING TO SOME OF THE RESPONDENTS AFFECTED THEIR SAFETY, THE MAIN COMPLAINT OF THE RESPONDENTS IS THAT JORDAN HAS DRIVEN THEM TOO HARD IN THE PAST. IT IS ABUNDANTLY CLEAR THAT THE RESPONDENTS DO NOT LIKE THE MANNER IN WHICH JORDAN SHOUTS AT THEM WHEN GIVING ORDERS. IT IS OF INTEREST TO NOTE HOWEVER, THAT NONE OF THE RESPONDENTS SAW FIT TO LODGE A FORMAL GRIEVANCE WITH THE APPLICANT WITH RESPECT TO ANY OF THE GRIEVANCE OF WHICH THEY NOW COMPLAIN. IN ADDITION THERE WAS ABSOLUTELY NO EVIDENCE THAT ANY EMPLOYEE HAD BEEN INJURED DIRECTLY OR INDIRECTLY, BECAUSE OF JORDAN.

THE RESPONDENTS WHO GAVE EVIDENCE TESTIFIED THAT THEY WERE NOT PHYSICALLY AFRAID OF JORDAN, BUT THEY DID STATE THAT THEY WERE AFRAID THAT JORDAN MIGHT STARTLE THEM BY HIS SHOUTING AND THEY MIGHT REACT BY DROPPING A TOOL ON ANOTHER EMPLOYEE WORKING AT A LOWER LEVEL AND THUS CAUSE SERIOUS INJURY. WE FIND IT EXTREMELY DIFFICULT TO ACCEPT THIS PORTION OF THE RESPONDENTS' EVIDENCE. ALL THE RESPONDENTS WHO TESTIFIED WERE MINERS EMPLOYED IN THE CONSTRUCTION OF A TUNNEL. NONE OF THE RESPONDENTS APPEARED TIMID OR EASILY FRIGHTENED OR DISTURBED. WHILE THEIR WORK AT THE BEST OF TIMES HAS INHERENTLY DANGEROUS CONDITIONS ARISING OUT OF THE NATURE OF THEIR WORK, WE ARE NOT DISPOSED TO FIND THAT JORDAN'S SHOUTING IN ANY WAY MATERIALLY ADDED TO THE HAZARDS OF THEIR JOB. WHILE JORDAN'S SHOUTING AND IMPATIENCE,

WOULD NOT ADD TO THE ENJOYMENT OF THEIR WORK, IT IS OUR OPINION THAT IT WOULD NOT BE UNDULY DISTURBING TO MEN WITH NORMAL SENSIBILITIES, HAVING REGARD ESPECIALLY TO THE NORMAL HIGH NOISE LEVEL OF TUNNEL OPERATIONS.

THE APPLICANT ADDUCED EVIDENCE THAT JORDAN HAD 10 YEARS EXPERIENCE AS A FOREMAN INCLUDING EXPERIENCE IN THE SAME TYPE OF OPERATIONS AS THAT WITH WHICH WE ARE HERE CONCERNED. WE ALSO HAVE EVIDENCE ADDUCED THROUGH THE APPLICANT'S OFFICERS AND OTHER FOREMEN THAT JORDAN IS BOTH EXPERIENCED AND COMPETENT. ALTHOUGH IT IS ADMITTED BY THE APPLICANT THAT JORDAN IS IMPATIENT AND EASILY EXASPERATED, THE APPLICANT DOES NOT ACCEPT THE PROPOSITION THAT JORDAN IN ANY WAY CREATES A SAFETY HAZARD FOR THE EMPLOYEES. THERE IS NO EVIDENCE BEFORE THE BOARD THAT THE RESPONDENTS OR THEIR BARGAINING AGENTS EVER BROUGHT TO THE ATTENTION OF THE APPLICANT THE ALLEGATIONS NOW MADE AGAINST JORDAN.

THERE IS EVIDENCE HOWEVER THAT SOME OF THE PRESENT RESPONDENTS AND OTHER FORMER EMPLOYEES OF THE APPLICANT REPRESENTED BY LOCAL 183 WALKED OFF ANOTHER SUBWAY SITE IN 1962 FOR FIVE OR SIX DAYS.

HAVING REGARD TO ALL THE EVIDENCE INCLUDING THE HISTORY OF THE RELATIONSHIP BETWEEN THE MEMBERS OF LOCAL 183 AND THE APPLICANT, THE FACT THAT NONE OF THE EVENTS NOW COMPLAINED OF APPEARED SERIOUS ENOUGH AT THE TIME OF THEIR OCCURENCE TO WARRANT A GRIEVANCE OR COMPLAINT BEING MADE TO THE COMPANY, THE FACT THAT THE CONSTRUCTIONS SAFETY BRANCH OF THE DEPARTMENT OF LABOUR WAS NOT NOTIFIED WITH RESPECT TO THE ALLEGATIONS NOW MADE BECAUSE OF JORDAN, THE FACT THAT THIS WORK STOPPAGE BEGAN EVEN BEFORE JORDAN COMMENCED WORK AND THEREFORE BEFORE ANY RECENT OCCURENCE COULD PRECIPITATE THIS ACTION, WE ARE OF THE OPINION THAT THE ALLEGATION THAT CHRIS JORDAN IS A SAFETY HAZARD HAS ABSOLUTELY NO FOUNDATION IN FACT.

WE ARE SATISFIED THAT THE ALLEGATION WITH RESPECT TO SAFETY WAS RAISED BY THE RESPONDENTS AS AN EMOTIONAL ISSUE TO BECLOUD THE REAL REASON FOR THE WORK STOPPAGE. IN MAKING THIS FINDING, WE ARE NOT SUGGESTING THAT THE RESPONDENTS ARE NOT SERIOUS IN THEIR ALLEGATION THAT THEY DO NOT LIKE WORKING UNDER JORDAN, HOWEVER THE REASON THEY GIVE FOR NOT WANTING TO WORK UNDER JORDAN IS IN OUR OPINION PURE SUBTERFUGE.

IN THESE CIRCUMSTANCES WE THEREFORE FIND THAT THE WORK STOPPAGE ENGAGED IN BY THE RESPONDENTS IN A STRIKE WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT AND THE STRIKE IS CONTRARY TO THE PROVISIONS OF SECTION 54 (1) OF THE ACT.

THE BOARD THEREFORE DECLARES THAT THE STRIKE ENGAGED IN BY THE RESPONDENTS WHICH COMMENCED ON OR ABOUR MARCH 2ND, 1964 IS UNLAWFUL."

BOARD MEMBER E. BOYER DISSENTED AND SAID:

"HAVING REGARD TO THE EVIDENCE AS TO THE NATURE OF THE WORK AND THE CLOSE PROXIMITY IN WHICH THE MEN MUST WORK, I ACCEPT THEIR REASON FOR REFUSING TO WORK WITH JORDAN AND WOULD ACCORDINGLY EXERCISE MY DISCRETION AND REFUSE TO MAKE THE DECLARATION REQUESTED BY THE APPLICANT."

SECTION 65 INDEXED ENDORSEMENT

7956-63-U: JOHN THEISEN (COMPLAINANT) v. THE ONTARIO PAPER CO. LTD. (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"JURISDICTION TO DEAL WITH COMPLAINTS OF THE NATURE HERE UNDER CONSIDERATION WAS FIRST CONFERRED UPON THE LABOUR RELATIONS BOARD BY THE LABOUR RELATIONS AMENDMENT ACT, 1960. THE RELEVANT PROVISION, THEN SECTION 57, NOW SECTION 65 OF THE LABOUR RELATIONS ACT, CAME INTO FORCE ON OCTOBER 22, 1960. THE PROVISIONS OF SECTION 65 ARE NOT RETROACTIVE IN EFFECT. ACCORDING TO THE STATEMENT MADE BY THE COMPLAINANT TO THE FIELD OFFICER WHO WAS AUTHORIZED TO INQUIRE INTO THE COMPLAINT, THE EVENTS UPON WHICH THE COMPLAINT HEREIN IS BASED ALL OCCURRED BEFORE OCTOBER 22, 1960. CONSEQUENTLY, THE BOARD IS NOT ENTITLED TO INQUIRE FURTHER INTO THE COMPLAINT BY MEANS OF A HEARING BY THE BOARD.

THE COMPLAINT IS ACCORDINGLY DISMISSED.

IN VIEW OF THE CONCLUSION AT WHICH WE HAVE ARRIVED, IT BECOMES UNNECESSARY FOR US TO DETERMINE WHETHER, ON THE BASIS OF THE STATEMENTS MADE BY THE COMPLAINANT TO THE FIELD OFFICER, THE COMPLAINANT HAS ESTABLISHED A PRIMA FACIE CASE ON THE MERITS FOR RELIEF UNDER SECTION 65."

CONCILIATION SERVICES INDEXED ENDORSEMENT

7487-63-C: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA - LOCAL UNION NO 625 (APPLICANT) v. THE WINDSOR BUILDERS' AND CONTRACTORS' EXCHANGE, AND THE GREATER WINDSOR HOME BUILDERS' ASSOCIATION (RESPONDENT). (REFERRED MARCH 1964)

THE BOARD ENDORSED THE RECORD AS FOLLOWS:

"THIS IS AN APPLICATION FOR CONCILIATION SERVICES.

THE RESPONDENTS, THE WINDSOR BUILDERS' AND CONTRACTORS' EXCHANGE, AND THE GREATER WINDSOR HOME BUILDERS' ASSOCIATION, CONTEND THE APPLICATION IS UNTIMELY BY REASON OF THE FACT THAT THE PARTIES HAVE RECENTLY CONCLUDED A COLLECTIVE AGREEMENT. THE PARTIES AGREE THAT IF THERE IS NO COLLECTIVE AGREEMENT, THE APPLICANT, INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA - LOCAL UNION NO 625, IS ENTITLED TO CONCILIATION SERVICES, AND IF THERE IS A COLLECTIVE AGREEMENT, THE APPLICATION IS UNTIMELY. THE SOLE QUESTION FOR DETERMINATION THEREFORE, IS WHETHER THERE IS A COLLECTIVE AGREEMENT IN OPERATION BETWEEN THE PARTIES.

IN 1961 THE APPLICANT AND THE RESPONDENTS ENTERED INTO A COLLECTIVE AGREEMENT WHICH WAS TO CONTINUE IN FORCE AND EFFECT UNTIL DECEMBER 31ST, 1963. THIS AGREEMENT RESULTED FROM GROUP BARGAINING BETWEEN THE RESPONDENTS AND A NUMBER OF TRADE UNIONS.

THE FIRST SEVENTEEN ARTICLES OF THE AGREEMENT WERE COMMON TO ALL THE AGREEMENTS ENTERED INTO BETWEEN THE RESPONDENTS AND THE VARIOUS UNIONS INVOLVED AND ARE REFERRED TO AS THE "MASTER CONTRACT". ATTACHED TO EACH AGREEMENT AND FORMING PART THEREOF ARE SCHEDULES WHICH DEAL WITH TERMS AND CONDITIONS PECULIAR TO EACH INDIVIDUAL UNION AND THE RESPONDENTS.

IN DUE COURSE THE APPLICANT GAVE NOTICE TO BARGAIN UNDER THE TERMS OF THE AGREEMENT. FOLLOWING THIS, THE ORIGINAL FIVE UNIONS WHICH HAD PARTICIPATED IN THE GROUP BARGAINING IN 1961, TOGETHER WITH TWO OTHER UNIONS, FORMED A COUNCIL OF TRADE UNIONS, ELECTED A CHAIRMAN AND A SECRETARY AND ON OCTOBER 15TH, 1963, NOTIFIED THE RESPONDENTS AS FOLLOWS: (EXHIBIT 4)

"PLEASE BE INFORMED HEREWITH THAT THE FOLLOWING LISTED UNIONS HAVE FORMED A 'COUNCIL OF TRADE UNIONS' FOR THE SOLE PURPOSE OF NEGOTIATING OUR FORTHCOMING AGREEMENTS, WITH EACH LOCAL UNION BEING ITS OWN SIGNATORY AUTHORITY:"
(EMPHASIS ADDED)

THE NAMES OF THE UNIONS WERE SET OUT AND A REQUEST WAS MADE FOR A DATE TO OPEN NEGOTIATIONS.

THEREAFTER BARGAINING TOOK PLACE BETWEEN SUB-COMMITTEES OF THE COUNCIL AND THE RESPONDENTS AND THIS CULMINATED IN A MARATHON BARGAINING SESSION BETWEEN THE COUNCIL AND RESPONDENTS ON NOVEMBER 26TH-27TH, 1963 AT WHICH A DOCUMENT (EXHIBIT 6) WAS DRAWN UP IN THE FOLLOWING TERMS:

"NOVEMBER 27, 1963 -

MEMORANDUM OF AGREEMENT

WINDSOR BUILDERS & CONTRACTORS EXCHANGE
THE GREATER WINDSOR HOME BUILDERS ASSOC. . . .
AND OTHER EMPLOYERS

AND

BRICKLAYER LOCAL 6
LABOURERS #625
CARPENTERS #494
IRON WORKERS #700
PLASTERERS #345
CEMENT MASON #345
PAINTERS LOCAL #1494
SHEET METAL WORKERS #235
BUILT UP ROOFERS #235

TEAMSTERS LOCAL #880
HOISTING ENGINEERS #793

WAGES	JAN. 1, 1964	10¢
	JULY 1, 1964	5¢
	JAN. 1, 1965	10¢
	JULY 1, 1965	5¢

TERMINATION DATE DECEMBER 31, 1965

ALL OTHER TERMS AS AGREED AND NOTED.

(SIGNED)

J.H.FLOOD
W.B.C.E.

(SIGNED)

FRANK J.HUTNIK"

MR. FLOOD IS THE MANAGER OF THE WINDSOR BUILDERS' AND CONTRACTORS' EXCHANGE AND MR. HUTNIK IS THE SECRETARY OF THE COUNCIL.

IT IS TO BE NOTED THAT ELEVEN UNIONS ARE NAMED IN THIS DOCUMENT WHEREAS THE COUNCIL CONSISTED OF ONLY SEVEN. THERE IS NO EVIDENCE BEFORE US TO SUGGEST THAT THE ADDITIONAL FOUR WERE PART OF THE COUNCIL. IT WOULD APPEAR THAT THEIR REPRESENTATIVES JOINED IN THE BARGAINING AT A LATER STAGE AS OBSERVERS.

THE APPLICANT AND THE RESPONDENTS ARE IN AGREEMENT AS TO WHAT IS MEANT BY THE PHRASE "ALL OTHER TERMS AS AGREED AND NOTED". THIS APPARENTLY REFERS TO THREE ITEMS DEALING WITH THE 8-HOUR DAY, PICKET LINES AND THE INDUSTRIAL STANDARDS ACT.

THERE IS NO EVIDENCE BEFORE THE BOARD TO SUGGEST THAT THIS AGREEMENT WAS OTHER THAN AN ORAL UNDERSTANDING BETWEEN THE PARTIES. CERTAINLY EXHIBIT 6 DOES NOT REFER TO ANY WRITING SETTING OUT THE AGREED TERMS, AND THERE IS NO SUGGESTION THAT ANY SUCH MUTUALLY AGREED ON WRITING EXISTED. PRESUMABLY EACH SIDE HAD MADE NOTES ABOUT THE VARIOUS ITEMS, BUT THERE IS NO EVIDENCE OF ANY COMMON DOCUMENT WHICH SETS OUT AN AGREEMENT RESPECTING THESE THREE TERMS.

FOLLOWING THE MEETING OF NOVEMBER 26TH-27TH, THE MEMBERS OF THE APPLICANT RATIFIED THE TERMS OF SETTLEMENT AS EXPLAINED TO THEM BY THEIR REPRESENTATIVE, MR. ROSSINI. SUBSEQUENT TO THIS MR. ROSSINI DISCOVERED THAT HIS UNDERSTANDING AS TO WHAT WAS MEANT BY THE WAGE CLAUSE IN EXHIBIT 6 DIFFERED FROM THAT OF THE RESPONDENTS. THE APPLICANT BELIEVE IT WOULD RECEIVE A 30¢ RAISE "ACROSS THE BOARD" OVER THE TWO-YEAR PERIOD. THE RESPONDENTS, RELYING ON A TERM IN THE THEN EXISTING COLLECTIVE AGREEMENT, TOOK THE POSITION THAT THE APPLICANT WOULD ONLY BE ENTITLED TO 75% OF THE NEW COMBINED RATES OF THE BRICKLAYERS AND THE CARPENTERS, DIVIDED BY TWO. THE PARTIES ERE UNABLE TO RESOLVE THEIR DIFFERENCES ON THIS POINT, WHEREUPON THE PRESENT APPLICATION WAS FILED WITH THE BOARD.

THE SECRETARY OF THE COUNCIL, MR. HUTNIK, AND THE BUSINESS REPRESENTATIVE OF THE APPLICANT, MR. ROSSINI, BOTH TESTIFY THAT THE COUNCIL HAD NO AUTHORITY TO SIGN A COLLECTIVE AGREEMENT ON BEHALF OF ANY INDIVIDUAL MEMBER OF THE COUNCIL. THIS IS CONSISTENT WITH THE PAST PRACTICE OF THE PARTIES AND WITH THE WORDING OF EXHIBIT 4. FURTHER, IT IS CLEAR THAT SINCE THE NOVEMBER 27TH BARGAINING SESSION A NUMBER OF TRADE UNIONS INVOLVED HAVE IN FACT SIGNED INDIVIDUAL COLLECTIVE AGREEMENTS WITH THE RESPONDENTS. IN MR. HUTNIK'S VIEW, EXHIBIT 6 CONSTITUTED MERELY A BASIS OF SETTLEMENT WHICH EACH UNION COULD TAKE BACK TO ITS MEMBERSHIP AND RECOMMEND ACCEPTANCE. NONE OF THIS EVIDENCE WAS CHALLENGED BY THE RESPONDENTS.

WHILE THE POSITION TAKEN BY THE RESPONDENTS IN THIS MATTER IS UNDERSTANDABLE AND WHILE IT MIGHT EVEN CONSTITUTE A DESIRABLE STATE OF AFFAIRS FROM THE POINT OF VIEW OF GOOD INDUSTRIAL RELATIONS PRACTICE, IN THE CIRCUMSTANCES OUTLINED ABOVE WE ARE IMPELLED TO FIND THAT THE COUNCIL HAD NO AUTHORITY TO CONCLUDE A COLLECTIVE AGREEMENT ON BEHALF OF ANY OF ITS MEMBERS AND THAT EXHIBIT 6 DOES NOT THEREFORE CONSTITUTE A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENTS. THERE BEING NO DOCUMENT IN WRITING SIGNED BY THE APPLICANT OR BY ANYONE WITH AUTHORITY TO BIND THE APPLICANT (SEE CANADA MACHINERY CORPORATION (1961)

C.C.H. CANADIAN LABOUR LAW REPORTS 16,194, C.L.S. 76-729), THERE IS NO REASON WHY THE APPLICANT'S REQUEST SHOULD NOT BE GRANTED.

THE APPLICANT'S REQUEST THAT CONCILIATION SERVICES BE MADE AVAILABLE TO THE PARTIES IS GRANTED WITH RESPECT TO ALL EMPLOYEES OF THE RESPONDENTS IN THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES EFFECTIVE NOVEMBER 15TH, 1961.

THE MATTER IS REFERRED TO THE MINISTER."

REQUEST FOR RECONSIDERATION OF BOARD'S DECISION IN CERTIFICATION APPLICATIONS

6825-63-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 1487 AFFILIATED WITH THE CARPENTERS DISTRICT COUNCIL OF TORONTO AND VICINITY (APPLICANT) v. THE FOUNDATION COMPANY OF TORONTO AND VICINITY (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 793 (INTERVENOR) v. INTERNATIONAL HOH CARRIERS' BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL UNION #183 (INTERVENOR). (DISMISSED JANUARY 1964).

ON MARCH 18, 1964 THE BOARD FURTHER ENDORSED THE RECORD AS FOLLOWS:

"THE APPLICANT HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION DATED JANUARY 29TH, 1964. ALL PARTIES HAVE HAD AN OPPORTUNITY TO CONSIDER THE REPRESENTATIONS OF THE APPLICANT AND SUCH REPRESENTATIONS AS WERE RECEIVED WERE DULY FORWARDED TO THE APPLICANT.

IN SUPPORT OF ITS REQUEST THE APPLICANT ARGUES,

"WITH THE GREATEST RESPECT, WE DO NOT SEE HOW IT IS POSSIBLE TO SAY THAT A DESCRIPTION WHICH MAY APPLY TO ONE ASPECT OF A JOB HAVING A DIVERSITY OF PHASES, SKILLS OR FUNCTIONS CAN COVER THE ENTIRE JOB."

AND AGAIN,

"WE SHOULD HAVE THOUGHT THAT A COMPLETE ANSWER TO THE ARGUMENT THAT THE APPLICATION IS UNTIMELY IS THAT NONE OF THE DESCRIPTIONS IN THE LABOURERS AGREEMENT IS COMPREHENSIVE ENOUGH TO COVER THE SPECIALIZED OPERATION FOR WHICH WE ARE APPLYING."

WHILE IT MAY BE TRUE THAT A "PILE DRIVER" AS DEFINED BY THE BY APPLICANT MAY PERFORM A VARIETY OF FUNCTIONS, THAT DOES NOT MEAN THAT THE BOARD WILL NECESSARILY FIND AS APPROPRIATE A BARGAINING UNIT CONSISTING OF "ALL PILE DRIVERS".

THE APPLICANT'S ARGUMENT APPEARS TO BE BASED ON AN ASSUMPTION THAT THE BOARD WOULD SO FIND. IT MAY WELL BE THAT THE BOARD WOULD FIND THAT THE APPROPRIATE UNIT WAS ONE DESCRIBED IN TERMS OF ALL CARPENTERS OR ALL LABOURERS EMPLOYED IN PILE DRIVING OR, PERHAPS, SOME OTHER DESCRIPTION WOULD BE USED. THE BOARD OF COURSE MADE NO FINDING ON THIS POINT AND WE MUST NOT BE UNDERSTOOD AS MAKING ANY SUCH FINDING AT THE PRESENT TIME. WE MENTION THIS POINT TO MAKE IT CLEAR THAT WHAT APPEARS TO BE A MAJOR PREMISE IN THE APPLICANT'S FIRST ARGUMENT IS NOT NECESSARILY A CORRECT ONE.

BUT EVEN ASSUMING THAT THE BOARD WERE TO FIND A UNIT OF "PILE DRIVERS" AS APPROPRIATE, IT WOULD NOT FOLLOW, AS THE APPLICANT SEEKS TO THINK, THAT THE APPLICANT WOULD BE ENTITLED TO SUCH UNIT IF IN FACT A CURRENT COLLECTIVE AGREEMENT PROVIDED THAT CERTAIN FUNCTIONS USUALLY PERFORMED BY "PILE DRIVERS" ARE TO BE PERFORMED BY MEMBERS OF ANOTHER TRADE UNION. UNLESS THE AGREEMENT WAS "OPEN", AN APPLICATION TO DISPLACE THE BARGAINING RIGHTS HELD BY THE TRADE UNION UNDER THE TERMS OF THE COLLECTIVE AGREEMENT WOULD NOT BE TIMELY UNDER THE LABOUR RELATIONS ACT. AND THAT IS PRECISELY WHAT THE BOARD HAS HELD IN THE PRESENT CASE. IT FOUND THAT THE AGREEMENT, WHICH WAS NOT "OPEN", "IS INTENDED TO AND DOES IN FACT COVER PILE DRIVING OPERATIONS ASSOCIATED WITH THE RETAINING OF EARTH AND WATER". THE BOARD DID NOT FIND OR SAY, AS SUGGESTED BY THE APPLICANT, "THAT A DESCRIPTION WHICH MAY APPLY TO ONE ASPECT OF A JOB.....CAN COVER THE ENTIRE JOB". THE BOARD WAS CAREFUL TO POINT OUT THAT IT WAS MAKING NO SUCH FINDING. ITS DECISION RELATED ONLY TO THE FUNCTIONS THAT WERE BEING PERFORMED AT THE TIME OF THE MAKING OF THE APPLICATION. IT MAY BE THAT IF THE FUNCTIONS BEING PERFORMED HAD HAD TO DO WITH PILES BEARING VERTICAL AS OPPOSED TO HORIZONTAL LOADS, THE APPLICANT WOULD HAVE BEEN ENTITLED TO BE CERTIFIED WITHIN THOSE RESTRICTED LIMITS. WE DO NOT SAY THAT THIS WOULD NECESSARILY HAVE FOLLOWED BECAUSE OUR DECISION CAREFULLY REFRAINED FROM DEFINING THE PRECISE SCOPE OF THE BARGAINING RIGHTS UNDER THE COLLECTIVE AGREEMENT IN QUESTION SINCE IT WAS NOT NECESSARY TO DO SO FOR THE PURPOSE OF THE DECISION.

IN ESSENCE, IT SEEMS TO US THAT WHAT THE APPLICANT IS ARGUING IS THAT BECAUSE "PILE DRIVING" CREWS MAY PERFORM A WIDE RANGE OF FUNCTIONS IT IS NOT OPEN TO THE PARTIES TO A COLLECTIVE AGREEMENT TO PROVIDE THAT CERTAIN OF THOSE FUNCTIONS SHALL BE PERFORMED BY OTHER EMPLOYEES. SO STATED, THE INCORRECTNESS OF SUCH AN ARGUMENT APPEARS TO US TO BE SELF-EVIDENT.

IF, HOWEVER, WE HAVE MISUNDERSTOOD THE ARGUMENT OF THE APPLICANT AND IF WHAT THE APPLICANT IS ARGUING IS THAT QUA THE WORK BEING PERFORMED AT THE DATE OF THE MAKING OF THE APPLICATION THE BOARD FOUND THAT ONLY CERTAIN ASPECTS OF THAT PARTICULAR WORK ARE COVERED BY THE COLLECTIVE AGREEMENT IN QUESTION, THEN THE APPLICANT HAS MISCONCEIVED THE FINDING OF THE BOARD ON THIS POINT. AS NOTED ABOVE, THE BOARD FOUND THAT THE COLLECTIVE AGREEMENT "IS INTENDED TO AND DOES IN FACT COVER PILE DRIVING OPERATIONS ASSOCIATED WITH THE RETAINING OF EARTH AND WATER". EARLIER IN ITS DECISION THE BOARD STATED "...THE COLLECTIVE AGREEMENT WAS INTENDED TO AND DOES IN FACT COVER THE EMPLOYEES ENGAGED IN THOSE PARTICULAR PILE DRIVING OPERATIONS".

SO THAT THERE MAY BE NO DOUBT IN THIS MATTER OUR FINDING, SO EXPRESSED, COVERS ALL ASPECTS OF THE PILE DRIVING PROCESS ASSOCIATED WITH THE RETAINING OF EARTH AND WATER WHETHER THE OPERATIONS BE UNLOADING, GUIDING OR REMOVING, ETC. WHEN WE SAID "WHETHER THAT LANGUAGE EMBRACES ALL ASPECTS OF THE PILE DRIVING PROCESS, IS UNNECESSARY FOR US TO DECIDE IN THIS CASE", WHAT WE WERE REFERRING TO WAS PILE DRIVING OPERATIONS NOT ASSOCIATED WITH THE RETAINING OF EARTH AND WATER.

THE FIRST POINT IN THE SECOND BRANCH OF THE APPLICANT'S ARGUMENT DEALS WITH A QUESTION OF EVIDENCE. WE HAVE CAREFULLY REVIEWED OUR NOTES AND ARE SATISFIED THAT OUR FINDINGS WITH RESPECT TO THE POSITION TAKEN BY INTERVENER No.2 ARE SUPPORTED BY THE EVIDENCE PARTICULARLY THAT OF THE WITNESS MOXSON DURING CROSS-EXAMINATION BY COUNSEL FOR THE APPLICANT.

IN SO FAR AS THE OTHER POINTS IN THE SECOND BRANCH OF THE APPLICANT'S ARGUMENT ARE CONCERNED, WE SHOULD MAKE IT CLEAR THAT WE DO NOT UNDERSTAND THE APPLICANT TO BE COMPLAINING ABOUT THE EVIDENCE RECEIVED WITH RESPECT TO THE TERMS SUCH AS "TIMBERMAN" ETC. FOUND IN THE COLLECTIVE AGREEMENT. EXPERT EVIDENCE WAS GIVEN AS TO THE MEANING OF THESE TERMS AS USED IN THE TRADE. THEY ARE CERTAINLY NOT ORDINARY TERMS OF ART AND, IN OUR VIEW, FALL WITHIN THE PRINCIPLE RELATING TO "PECULIAR OR TECHNICAL WORDS". IN ANY EVENT, NO OBJECTION WHATSOEVER WAS TAKEN AT ANY TIME TO THE EVIDENCE ADDUCED - INDEED, COUNSEL FOR THE APPLICANT PARTICIPATED IN CROSS-EXAMINATION OF THE WITNESSES CALLED - AND WE AGREE WITH THE SUBMISSION OF COUNSEL FOR INTERVENER No.2 THAT IT IS NOW TOO LATE FOR THE APPLICANT TO RAISE THIS MATTER. (SEE BELOW ON THE SAME POINT).

AS WE UNDERSTAND THE SUBMISSION OF THE APPLICANT, IT RELATES TO THE EVIDENCE RESPECTING THE OBJECTION OF INTERVENER No.2 TO THE RESPONDENT'S FAILURE TO USE LABOURERS ON PILE DRIVING OPERATIONS. IN THIS REGARD WE AGREE WITH THE SUBMISSION OF INTERVENER No.2 THAT SECTION 77 (2) (c) OF THE LABOUR RELATIONS ACT PROVIDES AN ANSWER. WE ALSO AGREE, HOWEVER, THAT EVEN IF THIS SECTION DOES NOT COVER THIS CASE, IT IS NOW TOO LATE FOR THE APPLICANT TO ARGUE THE POINT. IT IS CLEAR THAT THE EVIDENCE WAS AT NO TIME OBJECTED TO DURING THE HEARINGS AND FURTHER THAT COUNSEL FOR THE APPLICANT CROSS-EXAMINED WITNESSES ON THE VERY POINT. REFERENCE IS MADE TO THE REMARKS OF ESTEY J. IN NEWELL v. BARKER, (1950) 2 D.L.R. 289 AT P. 298.

WHILE THESE FINDINGS WOULD BE SUFFICIENT IN OUR OPINION TO DISPOSE OF THE OBJECTION, WE HAVE NEVERTHELESS TAKEN TIME TO RE-EXAMINE OUR DECISION ON THE ASSUMPTION THAT THE OBJECTION OF THE APPLICANT IS A VALID ONE. OUR CONSIDERATION HAS INCLUDED FURTHER STUDY OF THE EVANS LUMBER CASE (1958) C.L.S. 76-613. THAT CASE IS CERTAINLY AUTHORITY FOR SAYING THAT A FACTOR TO BE CONSIDERED IS WHETHER THE CONDITIONS OF A COLLECTIVE AGREEMENT HAVE IN FACT BEEN APPLIED TO A PARTICULAR GROUP OF EMPLOYEES. BEYOND THAT IT DOES NOT GO.

IN CONSIDERING THE MEANING OF THE COLLECTIVE AGREEMENT IN THE PRESENT CASE, WE DO NOT DISAGREE WITH THE APPLICANT THAT THE ACTS OF THE RESPONDENT IN NOT APPLYING THE TERMS OF THE AGREEMENT RESPECTING WAGES AND OTHER WORKING CONDITIONS TO THE MEMBERS OF THE APPLICANT IS A FACTOR WHICH MUST BE CONSIDERED. HOWEVER, AFTER CAREFUL CONSIDERATION, WE SEE NO REASON TO VARY OR REVOKE OUR ORIGINAL DECISION IN THIS MATTER THAT THE AGREEMENT IN QUESTION IS INTENDED TO AND DOES IN FACT COVER PILE DRIVING OPERATIONS ASSOCIATED WITH THE RETAINING OF WATER AND EARTH.

THE APPLICANT'S REQUEST TO RE-CONSIDER AND, ALTHOUGH IT IS NOT SPECIFICALLY STATED PRESUMABLY TO REVOKE OUR ORIGINAL DECISION, IS DISMISSED."

7714-63-R: GENERAL TRUCK DRIVERS, LOCAL 938 (APPLICANT) v. CHANDLER CARTAGE LIMITED (RESPONDENT). (GRANTED FEBRUARY 1964).

ON MARCH 10, 1964 THE BOARD FURTHER ENDORSED THE RECORD AS FOLLOWS:

"THE APPLICANT WAS CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT ON FEBRUARY 24TH, 1964.

ALTHOUGH A DOCUMENT WAS FILED IN OPPOSITION TO THIS APPLICATION PRIOR TO THE TERMINAL DATE IN THIS MATTER, NO EMPLOYEE OF THE RESPONDENT ATTENDED AT THE HEARING ON FEBRUARY 20TH, 1964 TO TESTIFY OR PRODUCE A WITNESS WHO WAS ABLE TO TESTIFY FROM HIS OR HER PERSONAL KNOWLEDGE AND OBSERVATION AS TO THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE DOCUMENT FILED AND THE MANNER IN WHICH EACH OF THE SIGNATURES ON THE DOCUMENT WAS OBTAINED IN ACCORDANCE WITH THE INSTRUCTIONS AS CONTAINED IN ITEM 8 OF FORM 5, NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION, WHICH WAS POSTED ON THE RESPONDENT'S PREMISES.

SINCE THE BOARD HAD NO EVIDENCE WITH RESPECT TO THE ORIGINATION AND CIRCULATION OF THE DOCUMENT WHICH WAS FILED IN OPPOSITION TO THIS APPLICATION, THE BOARD DID NOT FIND THAT THE DOCUMENT WEAKENED THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE AND THE APPLICANT WAS ACCORDINGLY CERTIFIED AS BARGAINING AGENT.

ON MARCH 6TH, 1964, THE BOARD RECEIVED A FURTHER DOCUMENT PURPORTING TO BE SIGNED BY A GROUP OF EMPLOYEES OF THE RESPONDENT INDICATING THAT THE EMPLOYEES WHO SIGNED THE DOCUMENT DID NOT WISH TO BE REPRESENTED BY THE APPLICANT TRADE UNION.

HAVING REGARD TO THE PROVISIONS OF SECTION 50 OF THE BOARD'S RULES OF PROCEDURE AND FOR THE REASONS GIVEN BY THE BOARD IN ITS DECISION IN THE PERMANENT TRANSIT MIX CONCRETE LIMITED CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, 1955-59, 16,138; C.L.S.76-644, THE BOARD DOES NOT DEEM IT ADVISABLE TO RECONSIDER ITS DECISION DATED FEBRUARY 28TH, 1964 OR OTHERWISE GIVE CONSIDERATION TO THE DOCUMENTS WHICH WERE FILED BY THE EMPLOYEES IN THIS MATTER.

THE REQUEST OF THE EMPLOYEES AS CONTAINED IN THE DOCUMENT RECEIVED BY THE BOARD ON MARCH 6TH, 1964 IS ACCORDINGLY DISMISSED."

SPECIAL ENDORSEMENT IN APPLICATION FOR CONCILIATION SERVICES

7369-63-C: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT)
v. CONSTRUCTION EQUIPMENT COMPANY LIMITED (RESPONDENT). (WITHDRAWN;
MARCH 1964)

ON MARCH 26, 1964 THE BOARD ENDORSED THE RECORD IN PART AS FOLLOWS:

"IN ITS DECISION CERTIFYING THE APPLICANT DATED
SEPTEMBER 20TH, 1963 THE BOARD FOUND "THE APPLICATION
WILL THEREFORE BE TREATED AS ONE NOT FALLING WITH SECTION 92
OF THE LABOUR RELATIONS ACT." IN THESE CIRCUMSTANCES IT
IS NOT OPEN TO THE BOARD ON THE MATERIAL PRESENTLY BEFORE
IT TO FIND THAT THE APPLICATION FOR CONCILIATION SERVICES
IS ONE FALLING WITHIN SECTION 92 OF THE LABOUR RELATIONS BOARD."

PART 2

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TABLE I

APPLICATIONS & COMPLAINTS TO THE ONTARIO LABOUR RELATIONS BOARD

	MARCH 1964	NUMBER OF APPLICATIONS FILED	
		1ST 12 MONTHS OF FISCAL YEAR 63-64	62-63
I CERTIFICATION	70	737	786
II DECLARATION TERMINATING BARGAINING RIGHTS	7	77	89
III DECLARATION OF SUCCESSOR STATUS	-	28	13
IV MEDIATION SERVICES	130	1198	1191
V DECLARATION THAT STRIKE UNLAWFUL	1	29	30
VI DECLARATION THAT LOCKOUT UNLAWFUL	1	5	10
VII CONSENT TO PROSECUTE	71	192	141
VIII COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	23	169	145
IX MISCELLANEOUS	1	20	23
TOTAL	304	2455	2428

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	MARCH 1964	NUMBER	
		1ST 12 MONTHS OF FISCAL YEAR 63-64	64-65
HEARINGS & CONTINUATION OF HEARINGS BY THE BOARD	103	1027	1192

TABLE III
APPLICATIONS & COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY MAJOR TYPES

	MARCH 1964	NUMBER OF APPLICATIONS DISPOSED OF	
		1ST 12 MONTHS OF FISCAL YEAR 63-64	62-63
I	CERTIFICATION	71	777
II	DECLARATION TERMINATING BARGAINING RIGHTS	5	98
III	DECLARATION OF SUCCESSOR STATUS	2	30
IV	CONCILIATION SERVICES	110	1153
V	DECLARATION THAT STRIKE UNLAWFUL	1	30
VI	DECLARATION THAT LOCKOUT UNLAWFUL	1	5
VII	CONSENT TO PROSECUTE	70	203
VIII	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	20	167
IX	MISCELLANEOUS	2	18
	TOTAL	282	2481
			2473

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPES AND BY DISPOSITION

DISPOSITION	MAR. 1964	1ST 12 MOS.		FISCAL YEAR 62-63	*EMPLOYEES	
		63-64	62-63		MAR. 1964	63-64
I CERTIFICATION						
GRANTED	52	560	555	1658	16976	30576
DISMISSED	16	139	214	983	4942	15906
WITHDRAWN	3	78	70	37	1129	2606
TOTAL	71	777	839	2678	23037	49088
II TERMINATION OF BARGAINING RIGHTS						
TERMINATED	3	68	58	8	1607	1738
DISMISSED	2	25	25	145	659	695
WITHDRAWN	-	5	9	-	161	238
TOTAL	5	98	92	153	2427	2671

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

APPLICATIONS DISPOSED OF BY
THE BOARD (CONTINUED)

NUMBER OF APPL'NS DISPOSED OF

MARCH 1964	1ST 12 MOS. 63-64	FISCAL YEAR 62-63
---------------	----------------------	----------------------

III CONCILIATION SERVICES*

REFERRED	90	1058	1065
DISMISSED	-	21	26
WITHDRAWN	20	74	83
TOTAL	110	1153	1174

IV DECLARATION THAT
STRIKE UNLAWFUL

GRANTED	1	7	6
DISMISSED	-	3	8
WITHDRAWN	-	20	17
TOTAL	1	30	31

V DECLARATION THAT
LOCKOUT UNLAWFUL

GRANTED	-	-	1
DISMISSED	-	1	8
WITHDRAWN	1	4	2
TOTAL	1	5	11

VI CONSENT TO
PROSECUTE

GRANTED	-	43	18
DISMISSED	1	11	20
WITHDRAWN	69	149	104
TOTAL	70	203	142

* [INCLUDES APPLICATIONS FOR CONCILIATION SERVICES RE UNIONS CLAIMING
SUCCESSOR STATUS.]

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY THE BOARD

	MARCH 1964	NUMBER OF VOTES	
		1ST 12 MONTHS OF FISCAL YR. 63-64	62-63
<u>*CERTIFICATION AFTER VOTE</u>			
PRE-HEARING VOTE	3	26	36
POST-HEARING VOTE	4	58	40
BALLOTS NOT COUNTED	-	-	2
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	1	14	17
POST-HEARING VOTE	2	49	68
BALLOTS NOT COUNTED	-	2	1
TOTAL	10	149	164

* INCLUDES APPLICANT - INTERVENOR APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENOR APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENOR IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY THE BOARD

	MARCH 1964	NUMBER	
		1ST 12 MONTHS OF FISCAL YR. 63-64	62-63
* RESPONDENT UNION SUCCESSFUL			
RESPONDENT UNION UNSUCCESSFUL	1	5	5
TOTAL	1	5	5

* IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN, THE APPLICANT IS A GROUP OF EMPLOYEES, OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

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